

THE CONSUMER AND THE LAW

A UNIT FOR HIGH SCHOOL STUDENTS

S. GEORGE GETZ

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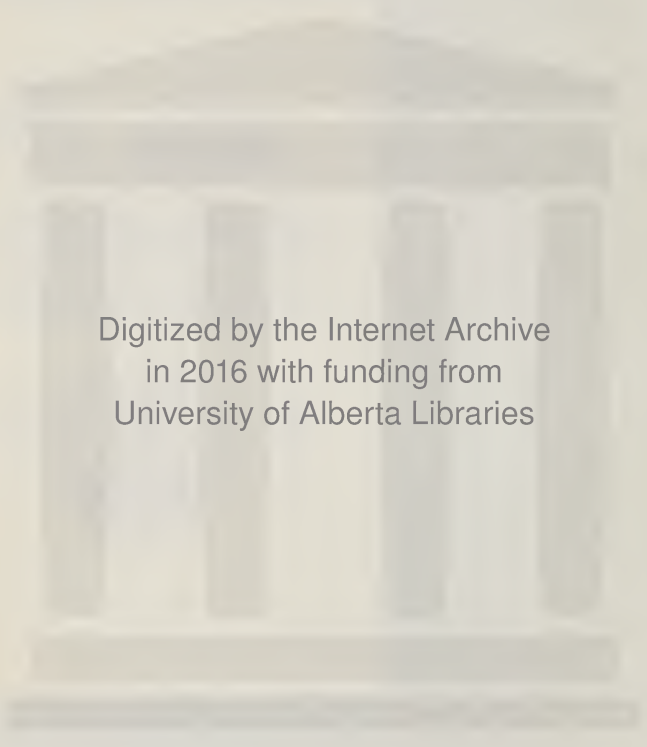
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CONSUMER EDUCATION SERIES
Unit No. 5

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Consumer education series

THE CONSUMER AND THE LAW

A UNIT FOR HIGH SCHOOL STUDENTS

BY S. GEORGE GETZ



Consumer Education Study
National Association of Secondary-School Principals
A Department of the
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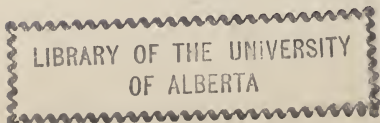
This unit, *The Consumer and the Law*, was prepared for the Consumer Education Study by S. George Getz. As is the case with all publications of the Study, a number of other persons in addition to the author contributed to the final product. The manuscript as a whole was checked by a number of legal experts. The sections dealing with the law of insurance contracts were examined by representatives of the Institute of Life Insurance and of the National Board of Fire Underwriters. The unit was illustrated by Milli Knauer Wignall.

To these persons and to many others who have given assistance, the Consumer Education Study is deeply grateful.

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PREFACE

THE CONSUMER EDUCATION STUDY, initiated in 1942, is sponsored by the National Association of Secondary-School Principals, a Department of the National Education Association. It is financed by funds from the National Better Business Bureau, which has also furnished generous help in facilitating contacts with experts in various pertinent fields but has in no way influenced, or attempted to influence, the conclusions of the Study.

In the preparation of each manuscript the Study has solicited and received advice from many individuals as well as from members of its Advisory Board, who represent education, industry, labor organizations, agriculture, and women's groups especially interested in problems of the consumer. Furthermore, a tentative edition of the unit has been submitted for criticism to teachers as well as to persons in other occupations who are in position to judge the validity of its content. All the criticisms and suggestions have been taken into account in preparing this edition. But the materials prepared for publication are based wholly upon the conclusions of the staff of the Study, which takes entire responsibility for them.

A chief purpose of the Consumer Education Study is to prepare a series of teaching-learning units, of which

this is one, for use in secondary schools. These units, based upon objective data, do not attempt either to promote the interests of producers and sellers or to revolutionize our economic system. Both purposes, it is held, are outside the functions of the schools. Instead, the units are intended to help young people become more intelligent, more effective, and more conscientious consumers in the economic system in which they live.

Consumer education is having a rapid development in secondary schools. It is taught not only in independent courses but also as a part of home economics, business education, social studies, agriculture, science, mathematics, and other subjects. The content of such courses or units varies greatly from school to school. Therefore, in attempting to prepare teaching-learning units that will be useful to the maximum number of schools, the Consumer Education Study is, at least in the beginning, concentrating on general principles underlying all consumption rather than on the skilled purchasing of specific commodities. And it hopes to make each unit sufficiently flexible and rich in resources to be adapted to a variety of situations.

THOMAS H. BRIGGS

Director

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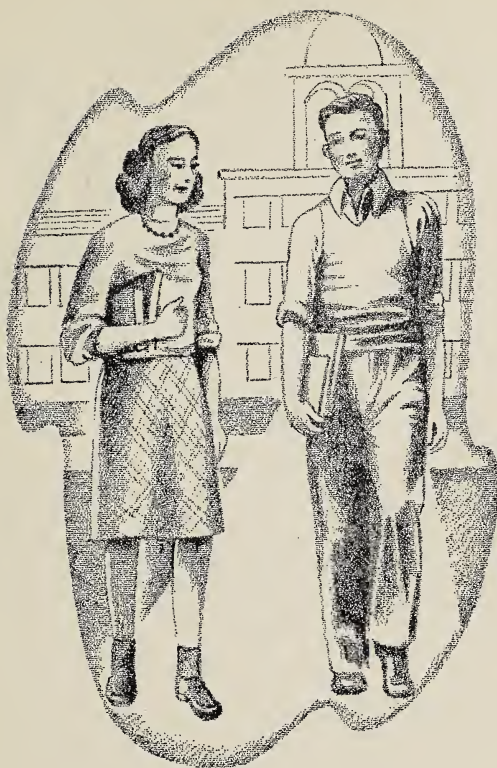
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PART I
DETERMINING OUR PURPOSES

CHAPTER 1

WHY STUDY LAW?

School was over for the day, and along every sidewalk there were groups of students hurrying home or to after-school jobs. But Ned and Jack were strolling over to the gym. For they were star performers on the rifle team, and it was time for the last practice before the county championship match.

"Boy, I really feel like shooting today!" Ned was feeling bouncy.

"I don't. Not with this old cannon," Jack replied ruefully, pointing to the target rifle under his arm.

"I thought you were going to buy a new Winchester with Lyman sights."

"You mean the one Watson's Department Store advertised in the *Herald* for \$47.50?"

"Yes, the Winchester 52," Ned answered.

"Well, I was. But when I got to Watson's the clerk said all the advertised rifles had been sold and they wouldn't have any more for quite a while." Jack's voice was full of disappointment.

"Why didn't you ask him to sell you the one in the show window, you chump?"

"I did," Jack countered, "but he said it was impossible to break up their window display; said he didn't have the power to do it anyway."

"Legally, I think you could have forced them to sell you that rifle, Jack. They had offered them for sale, so they'd have to. . . ."

By this time the rifle team had



assembled, and the coach was selecting the first order for the firing line. But all through practice and on the way home Jack kept wondering about Ned's idea. *Could* he legally insist that the clerk sell him the rifle advertised in the window? Would his age—he was only sixteen—prevent him from enforcing his claim?

Mrs. Wilson's attention was arrested by a striking advertisement:

TOWN SHOPS, INC.

Clearance

Sizes for Misses and Girls

Fur-lined Coats

\$88 and up

Fur-lined with Persian Lamb,
Silver Muskrat, South American
Lamb, in Pure Wool Fabrics

Use our Easy Payment Plan.

Pay \$29.33 down and
six monthly payments of \$9.95.
(including small service charge)

Just the thing she'd been looking for! Mrs. Wilson's mind was made up. She hurried down to the Town Shops, and soon selected one of the \$88 coats. Before she left the store with the coat, she had made the \$29.33 down payment and signed her name to an imposing contract entitled "Conditional Sales Agreement." No, she hadn't read the fine print—hadn't the time; besides, she was in a hurry to have her husband see the coat.

Two months later, the coat was stolen from their home. The Wilsons carried no burglary insurance, and they were worried. Who would have to bear the burden of the loss? Would they have to make four more payments on a coat they no longer had?

The answers to such questions lie in an interpretation of law. And the cases above reveal only two ques-

tions out of hosts of similar puzzles that arise every now and then in our consumer dealings. When we see such cases, an idea immediately pops into our heads: "We consumers need to know some law."

Why is that true? We know that unless we become lawyers we cannot learn enough law to be our own legal experts—not any more than we can learn enough about medicines to be our own doctors. The best we can hope for is a general understanding of basic principles, along with a few important details. Precisely what good will that do for us? Or, to put it another way—as we study this unit on law, what should we be trying to get out of it for ourselves?

A first reaction may be that we want to "get" somebody who has or may "put one over" on us. Yessiree! If we know law we can, as Charlie McCarthy would put it, "mow him down." Well, that may not be an altogether bad reason; there may even be a few times in our lives when we shall need to take someone into court and use the law as an instrument of force against him. But, taken by itself, that would be a pretty skimpy reason for studying law, wouldn't it?

A much more important reason may be exactly the opposite—that knowledge of law will help you *avoid* friction and trouble with people. After all, our dealings with other people, if we conduct them properly, can be a considerable source of enjoyment to us—one of the biggest sources, as a matter of fact. It's fun to do business with people if we like and respect them, especially if we



feel confident that they like and respect us, too. And the best way to keep that mutual liking and respect alive and growing is to *do business the business-like way*. As the farmers say, "Good fences make good neighbors."

In a slightly different way, sandlot baseball makes a good example. You probably don't follow official major league rules entirely, because you don't have enough space, sometimes you don't have enough players for nine on a side, and anyway you just aren't major leaguers. So you make up some rules of your own—three strikes are out even if the catcher drops the ball, etc.—and as long as everybody understands and plays by the same rules, things work out pretty well. You have an umpire, but more than likely he's just

one of the kids or some dad from the neighborhood, and you don't really expect him to exercise a great deal of police power. You play the game along your established lines, *because that's the way to play baseball*, and the game would be messy if you didn't stick to a system.

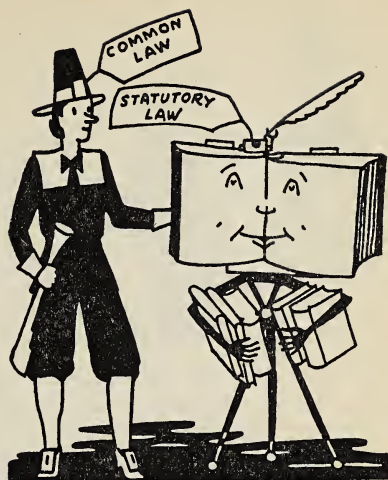
Well, the same thing is pretty much true of consumer-business dealings. There is a set of rules that make for smooth performance. There are policemen and courts and so forth to enforce the rules; but mostly people just follow rules of their own free will, *because that's the way to do business*.

After all, laws aren't restrictions some outside force has imposed upon us. Even in the old monarchies or the modern dictatorships, no law has ever been very successful over a long



period unless it had the support of the great majority. And our law, which has grown out of the long experience of free Englishmen and Americans, simply represents the people's crystalized judgment as to the best way to handle our problems.

Take a simple example: our game laws. Were they thought up by people who don't like to hunt and fish, and who wanted to restrict others? No. In the main, they were initiated, sponsored, and supported by sportsmen who had a problem of keeping a good supply of game and fish and willingly regulated themselves to achieve it.



The growth of law out of the common problems and experiences of the people is especially to be seen in our basic *common law*, which grew up in England, came over with the Colonists, and matured with some changes in America. Much of the common law was never "passed" by any parliament or legislature. It was compiled out of accepted traditions and customs and trade practices. It was distilled out of thousands of court decisions that settled disputes over varied problems. Because the English have always had a peculiar genius for "muddling through" informally, according to tradition, they got along especially well with rules that everyone understood even if no one had taken formal action. However, even they occasionally set down their fundamental guaranties in writing, as in Magna Charta; and they took definite Parliamentary action on special matters.

When the independent American republic was being set up, the old

English law was to a large extent taken over. But the Colonists had just been through a siege of bad government, at the hands of an arbitrary king. They were wary of vaguely defined government that could be anything some power said it was. Therefore, in the Constitution, the Bill of Rights, and elsewhere, they set down the basic rules much more explicitly than England ever had.

In addition to the common law there was always need for specific legislation on specific matters, especially to meet new needs not covered by the older laws. The resulting body of law is called *statutory law*, embodied in printed statutes. As time has passed, an increasing proportion of such laws is devoted to matters of trade and commerce, rather than simply to the suppression of violence and crime. And because our commercial affairs and organization are constantly growing more



complex, the volume of statutory law has increased tremendously in our day.

Nevertheless, statutory laws, too, well up out of the needs and experience of the people. Regulations calling for certain ways of catching oysters or of installing plumbing may not seem of very direct concern to you. But they did to *some* group, or the laws would not be there.

But what has all this to do with our first question: "Why study law?" It is directly related to the question. For it shows that the laws set the pattern for doing business. When you follow them you are literally "in the groove." If you don't follow them, you are out of step. And you can't very well fit your actions to the pattern if you don't know what the pattern is.

We've already seen that when you and those with whom you do business conduct your affairs in harmony with the law, one result is smoother, more pleasant relationships, less friction and dispute. You will reap another benefit, too. For although the law may seem a terrible instru-

ment of punishment to those who habitually break it, it is a wonderful mantle of protection to the man who keeps it.

This does not mean merely that if you do not steal you will not be sent to prison. There is something more positive than that. If you drive your car according to the traffic rules, you will have fewer accidents; furthermore, if you do have an accident, because the other fellow was driving through a red light, he will have to pay for the damage he does you. If you indorse a check properly before mailing it to your bank for deposit, you will have protection against anyone else's trying to cash it. If you notify your insurance company before moving insured furniture to a new residence, and follow the procedure the company prescribes, you will keep in force the protection the policy offers. If you know that an interchange of letters may constitute a contract just as valid as some beautifully engraved form, and you save your copies, you may have legal evidence of the contract when you need it.

In a thousand and one simple, little ways, in everyday transactions, you can follow the correct procedure and keep the law on your side—keep it back of you as a powerful set of guaranties. Or you can get out of the groove, use incorrect methods—and throw away the protection you could have had. It isn't necessarily any harder to do things the right way. If you get your business habits established correctly, proper procedure may come so naturally that you will not even have to think about it.

But it can pay tremendous dividends, in money as well as in a sense of security.

To sum up, then, we have looked at three basic reasons why it is a good thing for you—just an ordinary guy carrying on his ordinary affairs—to have an elementary understanding of the law:

1. It will help you keep your dealings

with your fellow-men smooth, easy to manage, and a source of pleasure.

2. It will help you to stay steadily under the umbrella of protection which the law offers to those who observe it.
3. In the occasional crisis, when an affair has gone badly wrong, it will help you to enforce your just rights against someone who is trying to rob you of them.

THE COMMON SENSE OF IT

1. How does what has been said above about the necessity of the average consumer's knowing something of the law square up with your experience or observation?

- a. Among your own family or friends, or in your community, do you know of irritations being caused or even friendships being broken because somebody failed to observe the rules of business-like procedure?
- b. Do you know of instances in which people have thrown away protection they might easily have had if they had known the law and proceeded accordingly?
- c. Do you know of cases in which a man needed to know what his rights were, under the law, and had to be able to take action to secure them against some offender?

2. In your opinion, which of the three reasons given for learning the fundamentals of law is most important to you? Which is least important? Why?

3. Can you give specific examples to show that the laws passed by Congress or by your legislature well up out of the problems and experiences of the people?



PART II
MAKING A CONTRACT

CHAPTER 2

AGREEMENTS

KINDS OF AGREEMENTS

1. *Howard Hale, a young man of nineteen, after receiving a notice of induction into the armed forces of the United States and before reporting for duty,*
 - a. *delivered his pet dog, Dodger, to a neighbor who promised to care for him during Howard's absence;*
 - b. *sold his bicycle and athletic equipment to a dealer in second-hand goods;*
 - c. *purchased a railroad ticket for a trip from New York City to Bridgeport, Connecticut, to visit his grandmother;*
 - d. *agreed to attend a farewell party given in his honor by his friends;*
 - e. *sent a farewell message by wire to his father in Chicago.*

Which of the above actions and agreements resulted in contracts?

One of the important characteristics of modern society is the dependence of individuals upon one another for the necessities of life. In order to obtain these necessities each individual must make his own arrangements with others. Ordinarily this is accomplished through an exchange of promises which give rise to rights and obligations, some of which are enforceable at law. These promises are commonly known as *contracts*. Thus, when a person purchases a radio, he enters into a contract with a dealer. In return for the dealer's promise to sell and deliver a radio, the purchaser promises to pay the agreed price. If either party fails to



perform this contract, the other may seek the aid of the law. Contracts arise informally out of simple everyday transactions such as purchasing a newspaper, riding on a bus or train, having a watch repaired, attending a baseball game or movie, making a telephone call, or turning on the electric lights at home. On the other hand, contracts may result from formal transactions, evidenced in writing and drawn by competent attorneys—contracts for purchasing a home, placing a mortgage on one's house, signing a lease.

But not all promises which are exchanged by individuals result in contracts. There are a great many promises which give rise to agreements which for practical purposes the law does not enforce. Some of these agreements relate to the personal affairs of the parties concerned and are of no importance to society at large; e.g., an agreement to attend a card party. Other agreements, such as an agreement to commit a crime or to perform an illegal act, are harm-

ful to society and consequently are strictly prohibited by law. Agreements may be classified as (1) socially beneficial or useful, (2) socially immaterial, and (3) socially harmful.

Socially beneficial agreements which create legal obligations enforceable at law are known as contracts.

Referring to the agreements made by Howard Hale, the delivery of his dog to his neighbor, the sale of his bicycle and athletic equipment, the sending of a wire to his father, and the purchase of a railroad ticket constituted contracts because each of these transactions was socially useful and therefore gave rise to legal obligations which the law would enforce. However, the agreement to attend the farewell party was socially immaterial and would not be enforceable at law.

ESSENTIALS OF A VALID CONTRACT

1. *During a conversation with a friend, Wilbur Moore said, "I'll sell you my record-playing radio for \$45." His friend Harold Eaton replied, "I'll take it at that price." It was agreed that the radio was to be delivered on the following day and payment was to be made upon delivery. Was a contract made?*

Although the parties who enter an agreement may intend to form a binding contract, no contract enforceable at law will result unless it contains the following essentials:

1. *Mutual Assent:* The minds of the parties must meet. The parties must agree to the same thing. When one party makes a definite

proposal or offer to another and the latter assents to the proposal in accordance with its terms, an agreement takes place. In the foregoing problem, Moore made a proposal to Eaton which the latter assented to. Since there was mutual assent a contract resulted.

2. *Competent Parties:* There must be two or more parties legally qualified to make enforceable contracts. (There are always two *parties* to a contract, but there may be more than two *persons*; i.e., either party may include several persons.) Generally, persons under twenty-one years of age are not competent to enter into certain contracts.

3. *Consideration:* Promises are not considered enforceable unless "something of value is paid to bind them." The price paid for binding a promise is known as the *consideration*. This consideration may consist of a promise to pay money, goods, services, or to perform or refrain from performing an act which one is legally free to perform. Thus, the consideration for the promise of Wilbur Moore to deliver a radio to Eaton is the latter's promise to pay \$45 on delivery.

4. *Legality and Form:* An agreement which is socially harmful and contrary to law will not result in a valid contract. Examples of such agreements are those which tend to injure public health or morals—gambling agreements and contracts for the sale of adulterated or poisonous foods. Sometimes the law specifies that a contract to be

enforceable must be in writing (see discussion on page 35). Contracts involving a sale of realty, or a sale of personalty of a certain minimum value are examples of such contracts. Inasmuch as Moore entered into a contract for a legal purpose, it is to that extent

enforceable at law. In most states, the contract between Moore and Eaton would not have to be in writing since the price of \$45 is below the usual statutory minimum (for a table showing statutory minimum values in various states see page 122).

IMPORTANT LEGAL PRINCIPLES

1. *A contract is a socially beneficial agreement which creates obligations enforceable at law.*
2. *A socially immaterial or a socially harmful agreement is not recognized by the law and is therefore unenforceable.*
3. *A contract enforceable at law must contain the essentials of: (a) mutual assent, (b) competent parties, (c) consideration, and (d) legal purpose and proper form.*

CASE-PROBLEMS

In each of the following problems, state whether you think the agreement is socially beneficial, socially immaterial, or socially harmful.

1. Mrs. Ames says to Mrs. Bates, "Will you meet me in front of the Public Library at 2 o'clock next Monday?" Mrs. Bates replies, "I'll be there."
2. Schultz offers to pay Davis \$1,000 if the latter will refrain from testifying in court in a case in which Schultz is personally interested. Davis agrees to do so.
3. Lane offers to sell his Harley-Davidson motorcycle to Johnson for \$35. Johnson agrees to pay this sum.
4. Having too many packages to carry home with him, Lanning checks two of them at the checking room of the New York Central Railroad.
5. Henry, a high school boy, borrows two books from the school library.
6. Harvey Hines enters a motorbus, drops a nickel—the legal fare—into the coin-box, and takes a seat.
7. Page, jestingly, offers to sell his gold watch, worth \$100, for a dime. Frisch, knowing that Page is only jesting, replies, "I accept."

8. By written agreement, Blades contracts to act for two years as manager of a store owned by Thomas, at a salary of \$8,000 per year.

CONTRACTS IN YOUR OWN AFFAIRS

1. Why is it important for you to know what is a contract and what is not? What might be the results of thinking you had entered into a contract when you really had not? Or of entering into a contract without realizing it?

2. Why do contracts become increasingly important in a civilization like ours, where economic affairs are growing in complexity and where individuals are highly dependent upon one another? What contracts do you commonly make which an Australian Bushman would have no chance to make?

3. What agreements have you or members of your family entered into recently? Which of these do you think constitute contracts? What difference does it make whether they are contracts or not?

4. The key point about a contract is its *enforceability*. Do you know of actual cases in which persons thought they could enforce certain provisions but found that they could not? Do you know of cases in which individuals had rights which they could have enforced but did not do so because they did not know what those rights were?

5. Except in certain cases where a written form is demanded by law, an oral contract is *legally* as valid as a written one. Does this mean that *for practical purposes* the two are always equally good? Why or why not?

CHAPTER 3

MUTUAL ASSENT

OFFER AND ACCEPTANCE

1. Allen said to Martin, "I'll sell you my fountain pen for \$3.00." Martin replied, "I'll take it." Was there an agreement?
2. Suppose in the above problem, Martin had replied, "I'll give you \$2.00 for it." Was there an agreement?

We have learned in the preceding unit that one of the essentials of a valid contract is mutual assent. Mutual assent takes place when the parties to a contract are in complete agreement. This legally is called a meeting of minds. It may be indicated by words or by actions or conduct other than spoken or written words.

A meeting of the minds of the parties results when one party makes an *offer* or proposal to another expressing a willingness to enter into a contract; and the second party indicates a willingness to comply exactly with the terms of the offer. The party making the offer is known as



the *offeror* while the one to whom the offer is made is known as the *offeree*. The latter's expression of willingness to comply with the terms of the offer is known as an *acceptance* of the offer. Mutual assent is indicated through the medium of offer and acceptance.

In problem 1, Allen, the offeror, made a definite proposal to Martin, the offeree. Martin indicated his willingness to comply with the terms of the offer by communicating his acceptance to Allen. Since the minds of both parties met in mutual assent, an agreement took place. In problem 2, Martin rejected Allen's offer by making a counterproposal at \$2.00. The minds of the parties did not meet in mutual assent; therefore no agreement resulted.

WHAT CONSTITUTES A VALID OFFER

1. Gimbel Brothers advertised in a daily newspaper, "Special Offer Today Only. HALE RADIOS at \$23.98."
2. Henry says to Jack, "I'll sell you my



camera for \$10." Henry owned three different types of cameras valued at various amounts.

3. Smith posted a notice at a public place offering a reward of \$25 for the return of his lost brief case. Hanson, who had not read the notice and knew nothing about the reward, found the brief case and returned it to Smith.

Has a valid offer been made in each of the above problems?

Mutual assent cannot take place without a *valid offer* made by one party to another, and an acceptance of the offer by the latter. In order to determine the validity of an offer, three tests are generally applied: (1) Is there an obvious intention on the part of the offeror to enter into legal relations with the offeree? (2) Is the offer clear and definite? (3) Has the offer been properly communicated to the offeree?

Applying these tests to the above problems, we find that in problem 1, a newspaper advertisement is not legally considered an offer because it is not the apparent intention of the dealer to sell the product to everyone who may respond to the advertisement (dealer may not have a sufficient quantity on hand to meet all demands). This is equally true of catalogs, circular letters, and quotations of prices. The offer in problem 2 does not mention which of the three different cameras Henry is willing to sell. He and Jack may have different cameras in mind. Since the offer is not clear and definite, its acceptance cannot result in an agreement. Problem 3 illustrates a general

offer which is addressed to the public at large. Such offers usually contain a promise to pay a reward for the return of lost property, or for information which the offeror desires. Anyone who acts with knowledge of this offer is deemed to have made an acceptance and may claim the reward. Since Hanson did not know of the offer, his act in returning the brief case did not constitute an acceptance.

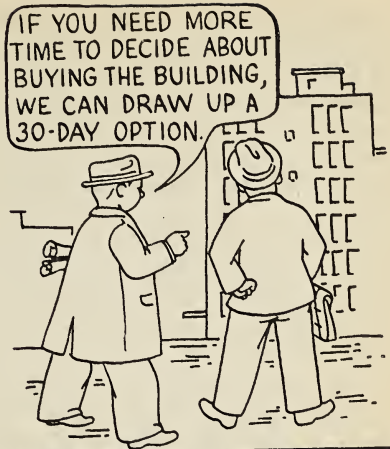
HOW AN OFFER MAY TERMINATE

A. LAPSE OF TIME

1. Robert offered to sell his stamp album to his chum Harold. He gave the latter three days in which to think it over. Harold did not reply at all. Thereupon, Robert sold the album to someone else. Was he legally justified?
2. Robert caught some fish which he offered for immediate sale to Mrs. Brooks at a stated price. Mrs. Brooks told Robert that she would let him know later in the day whether or not she intended to purchase the fish. Before hearing from Mrs. Brooks, Robert sold the fish to a neighbor. Was Robert legally justified in doing so?

An offer *terminates* at the expiration of the time given for its acceptance. In problem 1, a definite period of time for acceptance was indicated, namely three days. Since the specified period expired and Harold did not accept within that time, the offer is legally considered terminated. Where no time for acceptance is specified, an offer terminates at the end of a reasonable period of time. What is a reasonable period of time depends entirely upon

the circumstances of the particular case. In problem 2, an offer to sell a perishable commodity such as fish contemplates a prompt acceptance of the part of the offeree. Robert was perfectly justified in selling the fish to a neighbor since his offer to Mrs. Brooks lapsed. To avoid difficulties, it is a good policy for the offeror to specify a definite period of time within which the offeree may accept the offer.



OPTION

3. *Swift offered to sell an electric razor to Slow for \$12. While Slow was deciding whether or not to accept, Swift suddenly said, "I withdraw my offer. I have changed my mind." Is the offer terminated?*

An offeror may *withdraw* or *revoke* his offer any time before it has been accepted by the offeree. This is true even if the offeror has given the offeree a definite period of time within which to accept. However, if the offeror has received something of value from the offeree as an inducement to keep the offer open for a given period of time, the offer cannot be withdrawn during the specified time. A contract to keep an offer open in return for something of value as an inducement is called an *option*. Although the offeror, ordinarily, may revoke his offer at any time before acceptance, he must give notice of withdrawal or revocation to the offeree before the latter accepts the offer. Such notice of revocation may be given to the offeree by the offeror directly, or the offeree may learn of it indirectly through

a third party. Regardless of the manner by which the offeree learns that the offer is no longer open, his power to accept it is terminated from the moment he receives notice of withdrawal. In the foregoing problem, Swift withdrew his offer to Slow before the latter accepted it. He also gave verbal notice of the withdrawal to Slow; hence the offer terminated.

C. ACCEPTANCE AND REJECTION OF THE OFFER

4. *Hart said to Brown, "I will repair the roof of your garage for \$50." Brown replied, "I accept your offer." Did an agreement arise?*
5. *Assume in the above problem that Brown does not reply and Jones, a third party, says, "I accept your offer." Did an agreement arise?*
6. *Assume in the above problem that Brown replied, "No, thank you; I have already made the repairs myself." Did an agreement arise?*
7. *Assume in problem 4 that Brown replied, "I'll give you \$25 for the job." Did an agreement arise?*

Before an offer can become a binding promise resulting in a contract, it must be *accepted* by the offeree. Since the offeror has the right to select the person with whom he chooses to deal, only the one to whom an offer has been communicated may accept it. The intended offeree may not transfer the offer to a third party. A general offer to the public, such as an offer of reward, may be accepted by anyone who has knowledge of such offer.

The acceptance must be unequivocal and comply exactly with the terms of the offer. The acceptance may be indicated by the offeree by words or actions. Silence when there is a duty on the part of the offeree to speak will not constitute an acceptance; nor may the offeror state that silence on the part of the offeree will constitute an acceptance of an offer. In problem 4, Brown accepted Hart's offer in accordance with its terms by communicating an acceptance to the latter by word of mouth. In problem 5, Jones may not accept the offer because it was not intended for him. In problem 6, Brown *rejected* Hart's offer, causing it to terminate. In problem 7, Brown made a *counteroffer* which has the legal effect of terminating Hart's offer. Of course, Hart may decide to accept Brown's counteroffer. Where a counteroffer contains a statement that the offeree is nevertheless keeping the original offer under consideration, the counteroffer does not operate as a rejection of the original offer.

8. *Frank wrote a letter to his friend Fred offering to sell the latter a tennis*

racket for \$8.00. Fred wrote a letter in which he accepted Frank's offer. However, he lost the letter before mailing it. Did an agreement arise in this case?

9. *Assume in the above problem, that Fred wrote a letter accepting Frank's offer. The letter was properly stamped and addressed but was lost in the mail. Did an agreement arise?*

If an offer is made by letter or telegram, the offeror impliedly designates the United States Post Office or a particular telegraph company as his agent for the purpose of receiving the offeree's acceptance. An agreement arises as soon as the offeree deposits his acceptance with the offeror's agent, regardless of whether or not the offeror actually receives the acceptance. "What one does through an agent, he does himself." If the offeree selects his *own* agent for the purpose of communicating his acceptance, no agreement will arise until the offeror actually receives the acceptance. In problem 8, Fred failed to deposit the letter of acceptance with Frank's agent; therefore, no agreement arose. In problem 9, Fred delivered the letter of acceptance properly stamped and addressed to Frank's agent and the agreement arose as soon as the letter was deposited in the mailbox. Since the letter of acceptance never reached Frank, how was he to know that Fred had accepted? Frank might have provided for this contingency by stating in his offer that no contract was to arise until the acceptance was actually received by him.

IMPORTANT LEGAL PRINCIPLES

1. *Mutual assent takes place when the minds of the parties have met.*
2. *To be valid, an offer must indicate an obvious intention on the part of the offeror to enter into legal relations with the offeree.*
3. *A valid offer must be clear and definite and must also be properly communicated to the offeree.*
4. *An offer lapses if not accepted within the time specified, or if no time is specified, within a reasonable time.*
5. *An offer may not be withdrawn or revoked during the period in which a valid option exists.*
6. *Although the offeror ordinarily may revoke his offer at any time before acceptance, he must give notice of revocation to the offeree before the latter accepts the offer.*
7. *An acceptance must be complete and exactly in accordance with the terms of the offer. A qualified acceptance (counteroffer) or a rejection terminates the original offer.*
8. *If the acceptance is made in the same manner as the offer, the acceptance will be deemed communicated to the offeror as soon as it is received by the offeror's agent, even though the offeror never receives it.*

CASE-PROBLEMS

1. Sears, Roebuck sends a catalogue to Mr. Hicks with a list of new spring merchandise offered for sale. Does this act constitute a legal offer?
2. John Smith puts up a notice in the village post office, offering a reward of \$50 for the return of his wallet and its contents. Does this constitute a legal offer?
3. An auctioneer displays a valuable painting to a gathering in an auction shop. Has he made an offer?
4. Owen says to Wilson, "I will sell you my refrigerator for \$75." Small, a third party, says, "I will take it at that price." May Small enforce the contract?
5. The Rand Radio Shop sends a letter to Jones offering to sell him a "Cleartone Super X" radio for \$300, payable in six months from the date of purchase. The letter containing the offer is mailed but never reaches Jones. Is the offer valid?
6. Stone writes a letter to Larson offering to employ Larson as a plant superintendent at an annual salary of \$5,000. In closing, Stone says, "If I do not hear from you to the contrary, I shall assume that you have accepted my offer." Stone does not receive a reply from Larson. Is there an agreement?
7. Williams makes an offer by mail to Harris. Harris promptly mails an acceptance. The letter is properly stamped and addressed but is lost in the mail. Is there an agreement?

8. Bowles mails an offer to Yates to sell the latter an outboard motor for \$75. Yates immediately wires an acceptance. The telegram is lost and never delivered to Bowles. Is there an agreement?

9. Assume in problem 8, that Bowles received the telegram of acceptance. Would an agreement arise?

10. Horsman makes an offer by mail to Wheland, adding, "Upon receipt of your acceptance, I shall ship the washing machine immediately." Wheland accepts the offer and mails the acceptance properly stamped and addressed to Horsman. The acceptance never reaches Horsman. Is there an agreement?

11. How about Jack on Page 2? Could he have forced the store to sell him the rifle?

THE MORAL IN YOUR CASE

1. If what you learned in this chapter is important to you, it ought to have some effect on your actions. Can you draw up a simple set of rules for yourself on how you will handle the making of offers and acceptances?

2. In Chapter 1 we said one reason for knowing some law was to reduce friction in business dealings. Do you know of any case in which irritations or losses have resulted from vagueness or misunderstandings as to offers and acceptances?

3. Suppose you were offered a job by letter and took it by return mail, or that you applied by letter and received notice of your appointment. Would this constitute a contract? If so, what should you do with the letter? Incidentally, would there be value in having a carbon copy of your letter?

4. If you've made a proper acceptance of an offer which was still open, but the other party denies having received it, how could you *prove* that you made the acceptance? If you responded through the mails, what form of postal arrangement would help you support your claim? If necessary, ask the postmaster.

5. Offers and acceptances are often made by actions rather than by words. Can you think of examples from your own affairs? If you wished not to accept an offer in such cases, how should you govern your actions? Be specific.

CHAPTER 4

COMPETENT PARTIES

INCOMPETENCY OF MINORS

1. *Helen Smith, a high school senior sixteen years of age, purchased a set of golf clubs at a local department store. When her parents objected, Helen immediately decided to return the clubs and get her money back. Is the department store required to refund Helen's money?*

An agreement or contract arises when there is a "meeting of the minds" of the parties involved. Without the participation of at least two parties capable of giving a sane and intelligent assent, a valid contract cannot be created. Any person who lacks sufficient maturity of judgment is legally incompetent to become a party to most agreements. From a legal standpoint, a *minor* is a person who has not reached the age of full maturity of mind and judgment. Since early times, this age has been arbitrarily fixed by law at twenty-one years for both sexes. However, in some states females reach full contractual age at eighteen years, and in a few states married minors are permitted to contract like adults.



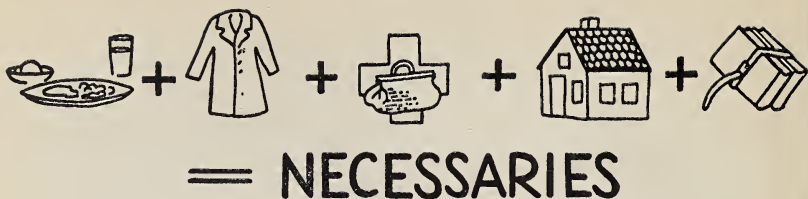
Generally speaking, a person under twenty-one years of age is regarded as too inexperienced to be able to deal on equal terms with older persons and therefore needs the special protection of the law.

If a minor contracts with an adult, the law, in certain cases, permits the minor to avoid carrying out the contract. Frequently, the minor is permitted to return the articles purchased and obtain the money which he has paid. But this privilege of avoiding certain contracts is given only to the minor. It is a personal privilege. And it is a privilege which should be used only as the law intended it—as protection for the less competent young person against a shrewd adult.

The adult with whom the minor contracted must carry out his part of the contract if the minor indicates a willingness to perform. A minor attains full contractual capacity on the day preceding his twenty-first birthday or on the last day of his twentieth year. Helen Smith, in the above problem, would be within her legal rights in returning the golf clubs and getting her money back. Inasmuch as she is considered legally incompetent to contract in a case of this type, the department store dealt with her at its own risk.

MINORS' CONTRACTS FOR NECESSARIES

1. *Young, a minor sixteen years of age, broke a finger in a baseball game, and engaged the services of a phy-*



sician to set it. Does the physician have a valid claim for his services?

Although a minor may legally avoid most of his contracts made with an adult, he, and in some states his parents, will be held liable on contracts for things which he actually needs to sustain life and well-being. The things which he actually needs are known in the law as *necessaries*. Generally, necessaries include: food, clothing, medical attention, shelter, and education. If the rule stated above were otherwise, merchants would refuse to supply the minor with necessaries and thus might endanger the minor's life and well-being. However, if a minor lives with his parents who keep him adequately supplied with necessaries, he cannot make binding contracts even for those things. Thus, if a minor is adequately supplied with clothes, his purchase of an additional suit will not be legally regarded as a necessary.

Since Young contracted for medical services which are considered necessaries, his contract is binding and the physician can recover for his services. If a minor contracts for necessaries, he is liable only for the reasonable value thereof or the amount he agreed to pay, whichever is lower.

MINORS' CONTRACTS FOR LUXURIES

1. *Henry Snow, a minor twenty years of age, purchased a second-hand automobile for pleasure-driving from a local used-car dealer for \$250 cash. Shortly before his twenty-first birthday, Henry returned the car to the dealer and asked for his money back. What are Henry's legal rights?*
2. *Assume in the above problem, that Henry returned the car within two weeks after his twenty-first birthday. What are Henry's legal rights?*

Any contract made by a minor, other than for necessaries, is regarded as a contract for *luxuries*—things not absolutely essential for the minor's well-being. Luxuries, generally, include articles purchased purely for ornamental purposes, articles acquired for pleasure purposes only, and articles with which the minor is already fully supplied. Contracts for luxuries are voidable only on the part of the minor, but the adult with whom he contracted is bound. Courts have decided at various times that contracts entered into by a minor for pleasure trips, correspondence courses, and for the purchase of pleasure cars and bicycles, etc., are voidable on the part of the minor.

If a minor has entered into a contract for the purchase of a luxury,

he may avoid the contract any time before reaching his majority or within a reasonable time thereafter. In problem 1, Henry Snow was within his legal rights in avoiding or disaffirming the contract for the purchase of an automobile for pleasure-driving. However, he would be obligated to return the car, and in some states pay for the reasonable wear and tear incurred before getting his money back. In problem 2, Henry chose to avoid the contract within two weeks after reaching his majority. Most courts would hold that two weeks is a reasonable time within which to disaffirm a contract for the purchase of a luxury such as a pleasure car. Generally, what is a reasonable time within which to disaffirm a contract for luxuries, after attaining majority, will depend upon the circumstances of the case. Clearly, the time within which to disaffirm a contract for the purchase of corporate stock (the price of which changes daily and even hourly) would be much shorter than that for the purchase of an automobile or a radio. If Henry had kept the car beyond a reasonable time, the law would not permit him to disaffirm the contract, but would assume that he had adopted or ratified it. Ratification will also be legally assumed where the minor upon reaching his majority sells the article to a third person. Certain contracts which a minor upon reaching his majority may make, are binding because of some statutory provision. In New York state, for example, a minor fifteen years of age is permitted to enter into a binding contract for life

insurance. In the same state, a minor eighteen years of age may not disaffirm a contract made in connection with a business in which he is engaged.

MISREPRESENTATION OF AGE BY A MINOR

1. *Connelly, a minor, signed a contract for the purchase of a motorboat for \$500. At the time of the sale, Connelly stated that he was over twenty-one years of age. Later, on his refusal to pay for the boat, the seller brought suit. What are the rights of the parties?*

When a minor deliberately misrepresents his age, he is not thereby barred from disaffirming a contract. However, because he has sought to take unfair advantage of the adult, the latter may hold the minor liable for the deceit. He may, in most states, collect money damages from the minor for any loss incurred as a result of the minor's falsehood. Although Connelly, in the above problem, would have a legal right to return the motorboat, the seller could hold him liable for any damages which he suffered as a result of Connelly's fraudulent representation of age. Where an adult has reason to believe that he is dealing with a minor, a cautious policy would be to ask him to obtain the signature of his parents or to communicate with the parents directly and obtain their consent to the transaction. If they consent, they incur liability.

OTHER INCOMPETENTS

Neither senility nor sickness will affect a person's capacity to make

contracts if sufficient intelligence remains to understand the transaction. Where, however, a person does not possess sufficient mental ability to comprehend the nature of his contracts, he is not considered legally

competent to contract. Thus, insane persons, idiots, and persons who are intoxicated are usually classed as *incompetents*. Aliens in time of war are incompetent to contract if their country is at war with us.

IMPORTANT LEGAL PRINCIPLES

1. *At common law, for contractual purposes, minors of both sexes become of age on the day preceding their twenty-first birthday.*

2. *In some states, by statute, females become of legal age for contractual purposes at eighteen years.*

3. *Contracts for necessities are binding on the minor but only for the reasonable value.*

4. *A minor's contracts for luxuries are voidable at the option of the minor only. An adult may not avoid his contracts on the ground that the other party is a minor.*

5. *A minor may avoid a contract for luxuries any time during his minority and within a reasonable time after attaining his majority.*

6. *A minor who misrepresents his age and causes financial loss to the adult may be held liable in money damages for the deceit.*

CASE-PROBLEMS

1. Davis, a nineteen-year-old student who attended a distant college, leased a room from Gregory for one month at \$40 per month. Davis occupied the room for the full month and failed to pay Gregory. Is Davis liable?

2. Williams, a minor, engaged the services of a dentist to extract an ulcerated tooth. Does the dentist have a valid claim for his services?

3. Paul, a minor sixteen years of age, purchased a second-hand bicycle from a local dealer for \$50. Is Paul liable on this contract?

4. Johnson, a young man of eighteen, is the son of a well-to-do merchant. His father keeps him adequately supplied with clothes. While his father is away on a short business trip, Johnson goes to a tailor and orders a new winter overcoat. Is either the father or the son liable if the youth later refuses to take the coat?

5. Edwardson, a minor, purchased a suit of clothes from Barney's for \$25. Three days later, Edwardson attempted to return the suit and recover the \$25. Would he be successful?

6. Assume in problem 5, that Edwardson had purchased a radio instead of a suit of clothes. Would your answer be the same?

7. A minor purchased an expensive movie camera and paid for it. One year after he became of age, he returned the movie camera to the dealer from whom he had purchased it and asked for the return of his money. Is the minor legally entitled to his money back?

8. Should your answer to problem 7 be the same if the minor attempted to return the movie camera three weeks after attaining his majority?

9. Pierce, while under twenty-one years of age, bought a typewriter from Jordan. After he became twenty-one, he sold the typewriter to Beck. May Pierce avoid or disaffirm his contract with Jordan on the ground that he was a minor when he made it?

10. Martin, a minor, signed a contract for the purchase of a set of encyclopedia on the instalment plan. At the time of the sale, Martin represented himself to be over twenty-one years of age. Later, on his refusal to make the instalment payments, the seller brings suit. What are the legal rights of the parties?

CHAPTER 5

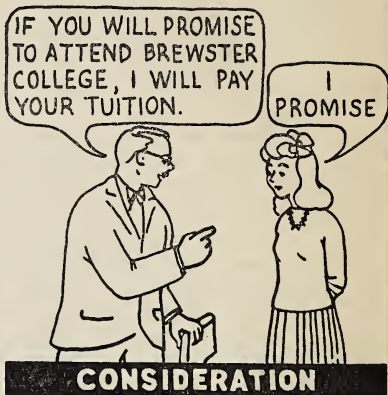
CONSIDERATION

PROMISES WHICH ARE LEGALLY BINDING

1. *Jenkins writes to Smith, "If you will promise to sell and deliver your automobile to me for \$200, I promise to pay you on delivery." Smith promises.*
2. *Tompkins says to his nephew John, "I promise to give you \$2,000 if you will obtain a B.S. degree before your twenty-first birthday." John obtains the degree within the specified time.*
3. *White promises to give his son \$100 if the latter will abandon his intention of going to Cuba and remain in New York. The son refrains from going to Cuba.*
4. *Ralph promises to take his friend Arthur on a three-day hunting trip but fails to do so.*

Which of the above promises are legally binding?

An agreement where one party obtains "something for nothing" is looked upon with disfavor by the law. A promise is not considered enforceable unless "something of value is paid to bind it." The price to be paid for binding a promise is known as a *consideration*. In general, consideration may consist of a promise to pay money, goods, services, or to perform or refrain from performing an act which one is legally free to perform. In problem 1, Smith's promise to pay \$200 is the consideration for Jenkins' promise to sell and deliver his automobile. In problem 2, the consideration for Tompkins' promise to pay his nephew \$2,000



is the nephew's performed act of obtaining a B.S. degree. In problem 3, the consideration for White's promise to give his son \$100 is the son's forbearance from taking a trip to Cuba. In problem 4, there is no consideration for Ralph's promise to take Arthur on a three-day hunting trip. Arthur's mere promise to go with Ralph is not sufficient to constitute a consideration because the promise did not contain an offer to pay money, goods, services, or to perform or refrain from performing an act which Arthur was otherwise free to perform.

CONSIDERATION FOR THE DISCHARGE OF DEBTS

1. *Sharp owes Dull \$100 which sum is not in dispute. Dull agrees to take \$50 in full settlement of the debt. Sharp pays the \$50 to Dull and receives from the latter, an ordinary receipt marked, "Paid in full. (signed) B. Dull." Afterward, Dull seeks to*

recover the balance of the debt. Can he legally succeed?

Where a debtor pays a smaller sum in full satisfaction of an undisputed larger debt due, the debt is not discharged even if the creditor issues and signs a receipt marked "Paid in Full." The reason for this rule is based upon the legal requirement that a promise must be supported by a valuable consideration in the form of a return promise, a performed act, or a forbearance from doing something one has a legal right to do. In the above problem, Sharp gave up nothing in return for Dull's promise to release his claim to the balance of the debt. Hence, Dull may sue for the balance of the debt and collect it.

2. *Assume in problem 1, that the \$100 was due on July 1, 1946, but that Dull agreed to accept \$50 in full settlement if it were paid to him on May 24, 1946. If this agreement is carried out, will the debt be discharged?*

In problem 2, Sharp did something which he was not already legally obligated to do. He paid the debt ahead of time; hence he has furnished a valuable consideration for the promise to release the balance of the debt and the debt is considered discharged.

3. *Assume in problem 1, that instead of money, Dull agrees to receive, in full payment of the debt, Sharp's second-hand portable typewriter worth about \$20. Is the debt discharged?*

Where the debtor furnishes something other than money (which he

is already obligated to pay) such as a new consideration in the form of a typewriter, the debt will be discharged, since he did something which he was not already legally bound to do. It is immaterial that the new consideration does not equal in value the balance of the debt.

4. *Assume in problem 1, that Sharp paid Dull \$50 and obtained from the latter, a properly executed written document known as a "general release." Would the debt be discharged?*

A properly executed general release in writing, will discharge a larger debt by the payment of a smaller sum without any new consideration. Debtors who wish to effect a binding settlement of debts would do well to obtain a general release from the creditor. This instrument is not difficult to fill out and the services of an attorney are not necessary. The general release is frequently used in settling claims for personal injuries.

5a. *Burns owed Ball \$500. Being unable to pay the debt when due, Burns asked for a four-months' extension of time. Ball orally promised this extension, but before the expiration of the four months he sued Burns for the money. Was he legally entitled to sue before the expiration of the four months?*

5b. *Would your answer to the above problem be the same if Ball's promise were made in writing?*

A mere oral promise to extend the time of payment of a debt is not binding without some additional inducement to the creditor. Burns, in

problem 5a gave up nothing of value as a consideration for the four-months' extension; hence Ball's promise to wait that long to collect the debt is not legally enforceable. In the state of New York, by statute, if the promise to extend the time of payment is made in writing and

signed by the parties, it is binding without any new consideration; therefore, in problem 5b, Ball's written promise would be binding without a new consideration. In some other states, an oral promise to extend the time of payment is held to be valid regardless of consideration.

IMPORTANT LEGAL PRINCIPLES

1. A promise is not legally enforceable unless something is paid to bind it.

2. Consideration may consist of a promise to pay money, goods, services, or to perform or refrain from performing an act which one is legally free to perform.

3. A smaller sum paid in full satisfaction of a larger debt is not binding without some new consideration or without a general release.

4. Where a debtor pays a smaller sum in full satisfaction of an undisputed larger debt due, the debt is not discharged even if the creditor issues and signs a receipt marked "Paid in full."

5. Generally, an oral promise to extend the time of payment of a debt is not binding unless the debtor furnishes a valuable consideration.

CASE-PROBLEMS

1. Davis owes Mitchell \$150. When the debt is due, Davis offers \$80 in cash and a watch that is worth about \$20 in full settlement. Mitchell accepts. Is the entire debt canceled?

2. a) Allen promises to donate \$50 to the Salvation Army. Later, he changes his mind and refuses to make the donation. Is he legally bound to keep his promise?

b) Assume in the above case that Allen had paid the \$50 to the Salvation Army; could he get his money back if he changed his mind?

3. Watkins says to Butler, a policeman, "I will pay you \$100 if you will keep a sharp lookout tonight for burglars on my premises." Butler does as Watkins requested. Is there a consideration for Watkins' promise?

4. Jenkins owed Cornell \$275 on a 30-day note due July 1, 1946. Cornell needed the money on June 15, 1946, and in consideration of getting it on that date, accepted \$260 from Jenkins in full settlement of the account. Is the entire debt canceled?

5. Vance owed Miller \$500 which was due on December 1. On

November 30, Vance asked Miller to extend the time of payment until February 1, which Miller orally agreed to do. On December 1, Miller sued Vance for the amount. Vance claims that he is not required to pay the debt until February 1. Is his contention legally correct?

6. Grant owes Mason \$400 which is past due. To effect a settlement, Mason agrees to accept \$300 in full satisfaction of the debt. Grant pays the amount and Mason gives him a general release in writing. Later Grant becomes possessed of considerable property and Mason takes action to recover the \$100 which he claims is still due. What are the rights of the parties?

COMMON-SENSE APPLICATIONS

1. Sometimes, since proof may be required, one must think not only about what the terms of a contract are, but also about what *evidence* can be presented in case of a dispute.

a. Suppose someone owed you \$25, but had given you no note or other form of evidence. Should you be willing to accept a \$10 check which he had marked "In full payment of loan"? If you did, would your later indorsement of it indicate that you considered it full payment?

b. If you made a partial payment to bind a contract, would there be any advantage in paying by check rather than in cash? In either case should you want a receipt? Need the check or receipt indicate what payment is for?

2. As consideration in a contract, is an actual payment of something of value necessary? Or is the *promise to pay* also good consideration?

3. Notices of transfer of title sometimes show a price of \$1.00, although the value of the property is much greater. Do you see why this is done?

4. If one is injured, in an automobile accident for example, the full extent of his injuries is not always immediately apparent. In such circumstances if the other party accepted liability and offered to pay, say \$50, on condition that you sign a general release, what would be your reaction?

5. In similar circumstances would it be wise to accept partial payments, for example, to replace torn clothing, if no general release were involved? Could you later sue, if necessary, for additional damages?

CHAPTER 6

LEGALITY AND FORM OF CONTRACT

SOCIALLY HARMFUL AGREEMENTS

1. *Howard said to Robert, "I'll bet you \$10 that Milton High School football team beats Rutland High in next Saturday's game." Robert replied, "I'll take that bet." If Howard wins the bet, may he legally recover the money from Robert?*

In chapter 1, all agreements were classified as (a) socially beneficial, (b) socially immaterial, and (c) socially harmful. It is quite obvious that no agreement which tends to injure the public health or morals will be enforced by a court of law. Gambling and wagering agreements are generally regarded as injurious to the public morals and are therefore illegal and void. In the above problem, Howard could not legally collect the bet from Robert. By refusing him aid, the law thus attempts to discourage gambling and wagering. In some states, the loser of a bet or an interested party may bring an action to recover the money which was paid to the winner, the theory of the law being to discourage gambling by making it difficult for the winner to retain his winnings. Some states permit supervised betting such as parimutuel betting at race tracks.

DEALING WITH UNLICENSED PERSONS

1. *Richards, a plumber residing in a city which permits only licensed plumbers to do work, has just completed a job for Heath of the same city. Heath has not yet paid Richards for the work done. On learning that Richards is unlicensed, Heath*

refuses to pay him for the work done. Richards sues Heath. Will he be successful?

It is generally recognized that the public interest requires that certain individuals such as doctors, lawyers, druggists, optometrists, real estate and insurance brokers, electricians, and plumbers be licensed by law.



Lawyers like most professional men must have a license to practice.

The object of such laws is to protect the public from incompetent and untrustworthy individuals who may attempt to offer their services and thus cause financial loss or bodily injury. Where a contract is entered into with an unlicensed person, the contract is void and any consideration paid to such a person may be recovered. In the above problem, Heath is under no legal obligation to pay Richards for the work performed.

FORM OF CONTRACTS

1. *Dr. Wilkins, a research physicist, needed a young man to assist him with certain radio experiments. The project was to last for fifteen months. He orally engaged Henry Wilks, a high school senior who excelled in*

physics, to help with the experiments, promising the boy steady employment for fifteen months. After six months, Wilkins decided that he no longer needed Henry's services and discharged the boy. What are Henry's rights?

Most individuals perform their contract obligations in accordance with the highest ethical standards prevailing in their communities. This is true regardless of the form of the contract. However, when certain contracts are made orally, a small minority will usually seek to take advantage of this fact by misrepresenting the actual terms of the contract, thus causing serious injustice to innocent parties. Frequently, they will employ outsiders to testify falsely as to the facts of a given contract.

The English Parliament recognized these possibilities as far back as 1676 and enacted a law to prevent such fraud and perjury. It was called the *Statute of Frauds*, and with some slight modifications this famous statute has been adopted by every state in this country. The Statute of Frauds provides that certain types of contracts must be evidenced in writing; otherwise, they will not be enforced by the courts. If the contract is in writing, the courts will generally permit no oral evidence to vary, alter, or contradict the written terms stated therein. Some of the contracts which the Statute of Frauds states must be made in writing are:

1. Contracts for the sale of personal property of a stated minimum value (amount varies in the different

SINCE YOU GUARANTEED THE DEBT HE CANNOT PAY, IT IS YOUR OBLIGATION TO PAY IT.



GUARANTEE

- states). This type of contract will be discussed fully in Part III.
2. Contracts for the sale of real property regardless of the value of the property.
 3. Contracts to *guarantee* the debt of another.
 4. Contracts which by their terms are not to be performed within a period of a year from the date they are made.

Referring to the contract made by Henry Wilks with the physicist, Dr. Wilkins, it is clear that the employment contract was to last for a period of fifteen months. It could not by its terms be performed in less time. Therefore, the provision of the Statute of Frauds relating to contracts, which by their terms are not to be performed within a period of a year from the time they are made, governs in this case. The contract should have been in writing to be enforceable. Henry would have no claim against Dr. Wilkins except for the wages which he earned during

the six months that he was actually employed.

The Statute of Frauds does not require the contracts enumerated above to be written in any particular form. The terms of the contract may be set forth in a note or memorandum or in a series of letters which when put together show at least the following: names of the contracting parties, subject matter involved, consideration, and the signature of the party assuming the obligation, or his authorized agent.

SUGGESTIONS FOR PREPARING AND SIGNING CONTRACTS

Contracts resulting from simple, everyday transactions such as riding in a bus, purchasing a newspaper, having a watch repaired, and similar transactions are not usually reduced to writing. If all contracts were required to be in writing, severe hardship would result in many cases and business in the modern sense would become impossible. However, there are many situations, other than those enumerated under the Statute of Frauds, where it is advisable to have a written contract. Written contracts help to prevent misunderstandings as to important provisions such as price, time, date of delivery, quality

of the goods, etc. During a lawsuit, the written contract is said to "speak for itself." As previously noted, oral evidence will not be permitted to alter, vary, or contradict the terms of the written contract except if fraud, illegality, or mistake can be shown. In those situations where it is found desirable to have a written contract, the following points should be borne in mind:

1. If the contract is of sufficient importance it should be drawn up by a competent attorney.
2. Before the contract is signed, be sure to read it carefully.
3. If the contract is printed in small type, take time to read it. If you fail to understand certain of its provisions, insist on an interpretation. If necessary, get your own attorney to help you.
4. Always get a copy of any contract which you sign. Retain your copy for at least six years. (This statutory period varies in the different states. See page 121 for Statute of Limitations.)
5. If you sign a contract as an agent for another, be sure to indicate this fact clearly.
6. Any changes which are subsequently made in a contract should be initialed on the contract by both parties.

IMPORTANT LEGAL PRINCIPLES

1. *Contracts must be made for a legal purpose to be enforceable.*
2. *Gambling and wagering contracts are void because they are illegal.*
3. *Where a contract is entered into with an unlicensed person, the contract is void and any consideration paid to such a person may be recovered.*

4. The Statute of Frauds provides that certain types of contracts must be evidenced in writing, or otherwise they will not be enforced by the courts. Some of the contracts mentioned by the Statute of Frauds are:

- a. Contracts for the sale of personal property of a stated value.*
- b. Contracts for the sale of real property regardless of the value of the property.*
- c. Contracts to guarantee the debt of another.*
- d. Contracts which by their terms are not to be performed within a period of a year from the date they are made.*

5. Oral testimony may not be used to vary, alter, or contradict the terms of a written contract except to show mistake, fraud, or illegality.

CASE-PROBLEMS

1. Cooley makes a wager with Baxter that the St. Louis Cardinals will defeat the Boston Red Sox in the World Series baseball games. Baxter loses the bet and pays Cooley. Later Baxter brings an action to recover the money which he paid Cooley. Will he succeed?

2. Quill, a physician, agrees to act as camp doctor for a period of two months. On learning that Quill has no license to practice medicine, the camp director refuses to pay him. Can Quill recover for his services?

3. During a telephone conversation Hoff agrees to buy Miller's house for \$8,000. Is this an enforceable agreement?

4. On Thursday, October 1, Adams orally agreed to work for Ryan for one year and to begin work on October 15. Adams began work but left after performing services of the reasonable value of \$40. Ryan refused to pay Adams for the services. Adams, thereupon, brought suit. Ryan's defense was that Adams contracted to work for one year but broke his contract by leaving without cause and that therefore he should not recover the \$40. Adams claimed that under the Statute of Frauds this oral contract was not binding. Who is right?

5. By written agreement, Clark agreed to sell his automobile to Boylan for \$150 but later refused to perform the contract. When sued by Boylan, Clark sought to prove by oral evidence that the actual price agreed upon by both parties was \$250. Is this evidence admissible?

THE COMMON SENSE OF IT

1. Businessmen, having agreed upon something orally, perhaps by telephone, frequently write each other letters or memoranda covering the agreement "for the record." Is this sound practice? Would the papers serve as better legal evidence than the conversation? Even if they were never to be used as legal evidence, would they have value in bringing to light or eliminating possible misunderstandings?

2. Suppose you were being solicited to contract for a correspondence course, and did not care for certain terms in the contract. The agent

says, "Yes, I know, the contract says that, but I assure you the company won't enforce those terms. If you prefer, it will be handled differently." What significance would the agent's statement have after you had signed?

3. In such a case as the above, if both you and the agent were willing to agree to a modified contract, what would be necessary to make the contract, as altered, binding? Are you sure that the agent is authorized by his company to make alterations which will bind the company?

4. Human relationships are important in business affairs. And a tremendous amount of business is carried on successfully on an informal basis. Are you going to insist upon the same "watertight" formal contracts when dealing with friends and with firms you have found to be reliable as when you are dealing with "outsiders"? On the other hand, even friends may forget exact terms. Perfectly reliable borrowers may die leaving no records. Can you suggest ways to be business-like and yet be tactful and not seem suspicious?

5. Many states require special forms of bills of sale, etc., in connection with transfer of title of automobiles. If you bought a used car from a friend, what formalities would be necessary in your state?



PART III

LEGAL PROBLEMS IN BUYING GOODS

CHAPTER 7

LEGAL PROBLEMS OF A BUYER OF GOODS

It is estimated that in certain recent years American consumers spent in excess of 95 billions of dollars for the purchase of goods of all types. No other economic activity ranks in importance with that of buying and selling goods. Since all consumers enter into contracts for the purchase of goods, whether necessities or luxuries, it is important for them to know the legal rights and obligations arising from such contracts. In addition, much hardship and financial loss may be avoided by consumers who have an understanding of the legal problems created by the contract relationship of seller and buyer. Some of the legal problems of a buyer of goods may be classified as follows:

1. *Form of the Contract*

- a. What is the meaning of the term "goods"?
- b. Which contracts for the purchase of goods must be in writing? For example, if I should have a suit of clothes made to order, would the contract have to be in writing to be enforceable at law?

2. *Ownership of the Goods*

- a. If I purchase goods which have been stolen from or lost by someone else, do I obtain a good title to them?
- b. If I buy goods for cash, when do I acquire title to them?
- c. If I buy goods "on approval," under what circumstances must I keep them and pay the purchase price?
- d. If I buy goods "with the option of return," what are my rights and obligations?

3. *Instalment Buying*

- a. When goods are purchased under instalment (conditional sales) contract, when do they become the property of the buyer?
- b. What are my rights and obligations if I fail to meet the instalment payments and the seller repossesses the goods?

4. *Warranties*

- a. If the seller misrepresented the quality of the goods which I have purchased, what are my rights?
- b. If I purchase an overcoat without examining it and later discover a defect which is obvious, what are my rights?
- c. If I should become ill after eating unwholesome food served to me in a restaurant, what rights have I?

Many similar problems concerning the buying of goods may arise to perplex the average consumer. In a majority of the states, the legal rights and obligations inherent in these problems are governed by the *Uniform Sales Act*. This statute aims to standardize the laws dealing with a sale of goods so that buyers and sellers residing in the same or in different states may receive uniform treatment. The term "goods" as defined by the Uniform Sales Act includes any tangible personal property, such as a vacuum cleaner, an automobile, or household furniture. It also includes intangible property such as money, stocks, bonds, patents, etc. It does not include real estate.

FORM OF THE CONTRACT

1. *Mrs. Blake agreed to purchase a vacuum cleaner from the Excelsior Company for \$78.50. It was agreed that the Excelsior Company was to deliver the desired cleaner to Mrs. Blake's home within ten days. Mrs. Blake made no part payment nor did she sign any contract. When the company attempted to deliver the vacuum cleaner, Mrs. Blake refused to accept it because she had changed her mind about purchasing a vacuum cleaner. What are the legal rights of the parties?*

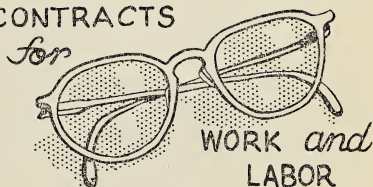
In Part II we saw that a legally enforceable agreement must contain four essentials: mutual assent, competent parties, consideration, and a legal purpose. These essentials are as applicable to contracts for the purchase and sale of goods as they are to any other type of contract. However, the Statute of Frauds in most states imposes an additional requirement, namely, that certain contracts of sale of goods be made in writing. This statute which is included in the Uniform Sales Act requires, as previously stated on page 29, that contracts for the sale of personal property of a stated minimum value must be made in writing. In New York State, for example, any contract for the sale of goods, wares, and merchandise of the value of \$50 or over is not enforceable unless:

1. the buyer receives part of the goods sold, and actually accepts the same;
2. the buyer gives something in earnest to bind the agreement or in part payment;
3. the parties to be charged by the contract, or their authorized agents,

have signed a written note or memorandum.

Inasmuch as Mrs. Blake did not receive and accept the vacuum cleaner, make a part payment, or sign any note or memorandum relating to the transaction, she cannot be held on the contract by the Excelsior Company in those states where the statutory amount is \$50 or over. What is the statutory amount in your state? (See table on page 122.)

CONTRACTS



1. *Mr. Jones orally contracts with Dr. Paine, a dentist, to have a set of false teeth made for \$250. When the teeth are ready, Mr. Jones refuses to accept them, pleading the Statute of Frauds as a defense. Will he succeed?*

The Statute of Frauds applies only to sales of "goods, wares, and merchandise." It does not apply to contracts for the manufacture of goods especially for the buyer, which are unsuitable for sale to anyone else in the ordinary course of business. These contracts are known as *contracts for work and labor* and may be made orally, regardless of the amount or price involved. Since the false teeth were made especially for Mr. Jones and are unsuitable for sale to anyone else, he would be liable to Dr. Paine for the contract price.

IMPORTANT LEGAL PRINCIPLES

1. *A contract of sale like any other enforceable contract must contain the four essentials of: mutual assent, competent parties, consideration, and legal subject matter.*

2. *A contract of sale, in the absence of a statute to the contrary, need not be in writing.*

3. *Under the Statute of Frauds, a sale of goods, wares and merchandise of a specified price or over is not enforceable unless there is evidence of (1) acceptance and receipt of all or part of the goods, (2) part payment, (3) a note or memorandum in writing.*

4. *If goods are manufactured especially for the buyer and are not suitable for sale to others in the ordinary course of business, the transaction is not a sale but a contract for work and labor, which need not be in writing to be enforceable.*

CASE-PROBLEMS

1. Jenkins orally agreed to purchase a bookcase from the Empire Furniture Company for \$60. Later, he refused to accept the bookcase and pleaded the Statute of Frauds as a defense when sued by the furniture company. Is the Statute a good defense?

2. Would your answer to problem 1 be the same if the purchase price of the bookcase were \$48 instead of \$60?

3. Milton orally agreed to make a suit of clothes for Vinton to the latter's individual measurements, for \$55. When the suit was finished, Vinton refused to accept it, claiming that the contract was not binding on him since it was not in writing. Is Vinton's contention correct?

4. Your friend purchased a hat and overcoat at a retail clothing store for \$53. He said to the proprietor, "I'll take the hat with me. Deliver the overcoat to me at 1:00 P.M. tomorrow." Later, he refused to accept the overcoat on the ground that the entire contract was unenforceable under the Statute of Frauds. He offered to return the hat, which the messenger boy refused to accept. What are the rights of the parties?

5. Randolph orally agreed to purchase a Philcourt radio for \$165 from the Hubbard Radio Company. A few days later, Randolph wrote and signed a letter which said, "I do hope that you will rush delivery of the Philcourt Radio which I purchased from you on January 2 for \$165." Subsequently, when Randolph refused to accept the radio, Hubbard Radio Company brought suit claiming that Randolph's letter was sufficient to satisfy the Statute of Frauds. Do you agree with the company's contention?

CHAPTER 8

OWNERSHIP OF GOODS

MEANING OF TITLE

1. *If you, unknowingly, purchase a tennis racket from one who has stolen it, do you obtain a good title? Should you obtain a good title if the tennis racket had been lost and then sold to you by the finder?*

When goods are sold, it is commonly understood that a *transfer of title* has taken place. *Title* is another name for *ownership*, which carries with it the right to possess, use, and dispose of goods. On the other hand, title or ownership of goods places on the owner certain responsibilities such as risk of loss and liability for injury to others. (For instance, the owner of an automobile involved in an accident resulting in injury to another may be liable for damages.)

Generally, only the owner of goods has a legal right to transfer title to another. "He who has no title can transfer none" is a well-established legal maxim. Hence, neither a thief nor a finder of goods ever has a valid title to transfer to others. However, in some states, by statute, a finder of goods may under certain circumstances acquire title which is good even against the true owner. These statutes generally provide that if the owner of the goods fails to claim them within a certain period of time, the finder may get good title to the goods. In the above problems, the purchaser would obtain no title to the tennis racket which he acquired from a thief, nor would he ordinarily obtain a good title if he purchased it from a finder.

TRANSFER OF TITLE

CASH SALES

1. *At a sporting goods store Richard selected a football costing \$8.00. After paying the proprietor, he received the ball. When did Richard legally become the owner of the football?*

The Uniform Sales Act includes special rules for determining when title passes from seller to buyer. These special rules apply when the intention of the parties is not clear. Many of these rules have no application to the everyday experiences of the average consumer of goods. Generally, consumers who purchase goods on a *cash basis* acquire title to them at the time when delivery and payment occur. This is true because the buyer has no established credit standing with the seller and the latter is unwilling to transfer either title or possession until he is paid in full. Accordingly, Richard became the owner of the football when he paid the proprietor and received the ball. Risk of loss was his from the moment he acquired title to the football.

CREDIT SALES

1. *Mrs. Ames purchased a new living room rug from a neighborhood furniture dealer. In spite of the fact that Mrs. Ames was unable to pay the purchase price, the dealer agreed to deliver the rug immediately and to wait ten days for payment. The rug was damaged by fire before delivery*

to Mrs. Ames, without the fault of the furniture dealer. Would Mrs. Ames legally be required to stand the loss?

When a sale is made on *credit*, the Uniform Sales Act provides in substance that the title passes to the buyer when the contract is *made*; i.e., when the acceptance of the offer takes place, even though payment or delivery or both are postponed to some future date. The fact that the dealer sold the rug to Mrs. Ames on credit indicates that he had confidence in her integrity and ability to pay. Therefore, he intended that she become the owner of the rug regardless of the time of payment or delivery. Since Mrs. Ames legally had title to the rug, the loss would fall on her—risk follows title. Practically speaking, the dealer would deliver a new rug to her and collect from the insurance company for the loss of the first one. This is the policy of all reputable dealers who seek to build good will and expand their business activities.

SALE "ON APPROVAL"

1. A door-to-door salesman left a set of 5 volumes of the Pictorial History of World War II with Mrs. Swift on 30 days' trial. Shortly thereafter, before Mrs. Swift had made up her mind, the books were destroyed by fire without any fault on her part. Who should suffer the loss?

If a consumer-buyer receives goods *on trial* or *on approval*, the intention of the parties as to transfer of title is quite clear. Title is not to pass until the consumer-buyer has



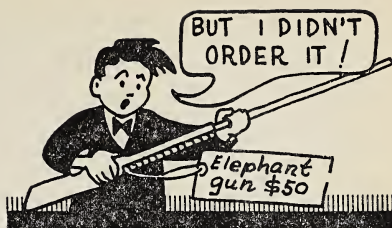
indicated approval either by his words or by his conduct. If the buyer retains the goods beyond the agreed time, or beyond a reasonable time if no time is specified, without giving the seller notice of approval or rejection, he will be deemed to have approved. In the problem stated above, the loss occurred during the trial period. Mrs. Swift had not yet indicated her intentions. Title still resided with the seller and risk of loss would have to be borne by him.

SALE WITH PRIVILEGE OF RETURN

1. Jack's father purchased an Ivor Johnson bicycle as a birthday gift to Jack. The storekeeper agreed that if Jack should find the bicycle unsatisfactory, his father could return it within 30 days and get his money back. If the bicycle is stolen from Jack during the 30-day period, who would have to stand the loss?

When goods are delivered to the consumer-buyer *with the privilege of return*, title passes to the buyer

at the time of *delivery*. However, if the buyer should choose to return the article to the seller within the stipulated time or within a reasonable time, if no time is stipulated, then the title reverts to the seller. Risk of loss is on the consumer-buyer if the goods are damaged or destroyed while they are in his possession. It is important for buyers to remember that from their viewpoint it is decidedly better to buy on trial or on approval, while from the seller's viewpoint it is better to have a sale with the privilege of return. Jack's father, in the above problem, would have to bear the loss because he had title to the bicycle at the time of the theft.



GOODS NOT ORDERED

1. *A person received an unordered book by mail. Included with the package was a notice requesting the addressee either to remit payment within 10 days or to return the book. Is the addressee obliged to return the book or remit payment for it?*

When *unordered goods* are received by a person, he is under no legal obligation to keep and pay for

them. Since a sale is a contract, it requires a meeting of the minds or mutual assent. The prospective purchaser or addressee need not accept the unsolicited offer. However, since the goods are in the addressee's possession, he must not use them or exercise any dominion over them—if he does, an acceptance will be implied as a matter of law, and title to the goods will pass. What action should the addressee then take? He may mark the package "Rejected" or "Return to Sender" and deliver it to the post office or to the postman. Again, he may hold the article without using it, and notify the seller to send for it. Or he may keep it for a reasonable time and then discard it. For he is under no obligation to perform services for the sender.

IMPORTANT LEGAL PRINCIPLES

1. *Title or ownership carries with it certain rights and responsibilities. The owner has the right to possess, use, and dispose of the goods, but accepts the responsibility for loss or interference with the rights of others.*

2. *One who has no title (e.g., a thief) can give no title.*

3. *A finder of an article has a better title to it than anyone else except the true owner.*

4. *In a cash sale, title does not pass until delivery and payment are made.*

5. *Unless the parties intend otherwise, in a sale on open-account credit, title passes at the time the contract is made even though payment and delivery or both are postponed to some future date.*

6. *When goods are delivered to the buyer on approval or on trial, title passes when the buyer approves either by words or actions.*

7. *When goods are delivered to the buyer on sale with the privilege of return, title passes to the buyer on delivery. However, the buyer may exercise his option of returning the goods within the specified period or within a reasonable time if no time is specified and revert the title in the seller.*

8. *A person who receives unordered goods is under no obligation to keep and pay for them. If he exercises any act of ownership over them, title will pass and he will be liable for the purchase price.*

CASE-PROBLEMS

1. Baker, a salesman employed by a sporting goods shop, took athletic supplies from stock without the knowledge or consent of his employer and sold them to members of the Newton High School football team. May the proprietor of the store recover the goods from the players?

2. The finder of a valuable diamond ring sells it to Jones, an innocent purchaser. Has the purchaser of the ring a valid title against the owner of the ring?

3. Edwards sold a washing machine to Harris on approval. After the lapse of a reasonable time, the machine was damaged in a fire. Must Harris pay for the machine?

4. Davidson purchased a Persian rug. The seller agreed to take the rug back within 30 days if Davidson decided to return it within that period. Who has title to the rug during the 30-day period?

5. Johnson received three neckties which he had not ordered. The sender notified him to remit \$2.00 or to send them back. What should Johnson do if he decides not to keep the neckties?

6. Robert purchased a bottle of cleaning fluid at the corner drug-store and paid the proprietor in cash. When did title to the cleaning fluid pass to Robert? If Robert lost the bottle of cleaning fluid while on the way home, who would have to stand the loss? Would your answer be the same if Robert purchased the cleaning fluid and the store-keeper charged it to his mother's account?

APPLICATION TO YOUR OWN PRACTICES

1. Occasionally door-to-door sellers offer furs or some such article at surprisingly low prices. There is some chance that the prices are possible only because the goods are stolen. Aside from the ethical

principles involved, how do you feel about buying such goods, knowing what you do about the seller's ability to give you title?

2. The question of *evidence* arises again. For instance, it makes a difference whether you buy on approval or with the privilege of return. Will the terms appear on the sales slip? Will the sales slip be required if you wish to return the goods? If so, what should you do with the slip? Is there any other reason for keeping sales slips?

3. In the same connection, suppose a seller whom you do not know persuades you, on the basis of a purely oral agreement, to take home a radio on trial. The outstanding evidence, if he refuses to take it back, is that you did accept delivery. What evidence should you have gotten to protect yourself?

4. Some sellers require you to sign the sales slip when you buy on credit. In what way does this protect the seller? In what way does it protect you?

CHAPTER 9

INSTALMENT BUYING

IMPORTANCE

Millions of Americans buy on credit. Families in every station of life buy on the *instalment plan*. A few years ago, six out of every ten automobiles were sold on a deferred-payment plan. Nearly half the furniture manufactured was sold on monthly instalments. More than half the household appliances—refrigerators, vacuum cleaners, lamps—were sold on term credit. It is generally conceded that the greatest number of instalment sales are made to families of small or moderate income—people who are frequently unfamiliar with the terms of the obligations assumed by them.

THE INSTALMENT CONTRACT

1. *Mrs. Burton purchased a new dining-room suite from the Spade Furniture Company for \$360, under a conditional or instalment sales contract. Mrs. Burton paid \$120 down and promised to pay the balance in ten monthly instalments. How does this sale differ from a cash sale? a credit sale?*

In the usual cash sale, title passes when the goods are delivered and paid for. The seller does not part with either the title or possession until the purchase price has been paid. In an ordinary credit sale the seller, because of the confidence which he has in the buyer's integrity, parts with both title and possession in return for the buyer's promise to pay at some future date. However,



many buyers have no established credit ratings and are thus unable to buy goods—especially large, expensive articles—on credit. To meet the needs of this large class of consumers, modern business has devised the *instalment or conditional sales contract* under which the seller parts with possession of the goods but expressly retains title to them until the full purchase price has been paid. In this way the seller may extend credit more freely and at the same time minimize his losses by retaining the title to the goods as security for nonpayment or default. If the conditional sales contract does not expressly reserve title to the goods in the seller, it is not considered a conditional sale but a sale on credit. In the above problem, Mrs. Burton would be entitled to the use and enjoyment of the furniture, but the Spade Furniture

Company would retain title as security until all payments had been completed.

RISK OF LOSS

1. *An electric refrigerator purchased under a conditional sales contract was damaged by fire while in the buyer's possession. Upon whom would the loss fall?*

Generally, *risk of loss* follows title but a conditional sale is an outstanding exception to this rule. Although the conditional buyer does not own the goods, he is nevertheless charged with the responsibility for loss due to fire, theft, or other misfortune while they are in his possession.

FILING OF INSTALMENT CONTRACT

1. *Winters sold a radio to Woods under a conditional sales agreement. Before the final payment was made, Woods sold the radio to Jones who knew nothing of the conditional sales agreement. Will Jones obtain a good title to the radio?*

In order to protect himself against purchasers from the conditional buyer, the conditional seller is required by law to *file* his conditional sales contract in a public recording office; e.g., county clerk's office. This serves as notice to all persons that the seller is the true owner of the property in the conditional buyer's possession. If the conditional seller fails to file the contract in the proper public office, an innocent purchaser from the conditional buyer obtains a good title to the goods. However, statutes in some states make it a criminal offense for the conditional buyer to sell or remove the goods from the county or state without the

consent of the conditional seller. If Winters has failed to comply with the filing requirement, he has no rights against Jones. But he may, if the statutes of his state permit, bring criminal charges against Woods.

DEFAULT BY INSTALMENT BUYER

1. *A conditional buyer after making several payments refuses to make any further payments. What rights has the conditional seller?*

The conditional seller is legally entitled to take back the goods if the buyer fails to make the payments due, or *breaches* a condition of the contract. Generally, sellers will exercise their contract right to repossess the goods only as a last resort because, primarily, they are interested in obtaining payment for the goods. If the conditional seller does repossess the goods, and upon resale he sustains a loss, the instalment contract in some states provides that he may recover the deficiency from the buyer. If the resale should result in a profit, the conditional buyer is entitled to it. If articles purchased on the instalment plan are repossessed, the seller ordinarily is permitted to keep the payments already made. In some states, statutes require the seller to give notice of intention to repossess.



IMPORTANT LEGAL PRINCIPLES

1. *A conditional sale is one in which the seller parts with the possession of goods but not with the title until the full purchase price has been paid.*

2. *If the seller does not expressly reserve title, the sale is not a conditional or instalment sale but one on credit.*

3. *The title retained by the seller is for security purposes only. Title for risk passes to the buyer.*

4. *A conditional sale must be recorded by the conditional seller in a public office provided for the purpose in order to protect his title to the goods.*

5. *Upon default in payments, or if the buyer fails to live up to his contract, the conditional seller may repossess or retake the goods.*

6. *If repossessed goods are sold and the conditional seller sustains a loss, he may in some states recover the deficiency from the buyer. If the resale should result in a profit, the conditional buyer is entitled to it.*

CASE-PROBLEMS

1. Barton bought an Underwood typewriter from the Standard Typewriter Company for \$85 under a conditional sales contract. Before the typewriter was delivered to Barton, it was damaged by fire. The Standard Typewriter Company claims that Barton is liable for the loss. Do you agree? Why or why not?

2. Assume in problem 1, that the fire occurred shortly after the typewriter was delivered to Barton's home. Upon whom would the loss fall? Would your answer be the same if the typewriter were stolen while in Barton's possession?

3. Bartell sold and delivered to Gray a refrigerator under a conditional sales contract for \$125. Gray made a down payment of \$45 and agreed to pay the balance in monthly instalments. After making two payments, Gray sold the refrigerator to Harris who believed Gray to be the owner. May Bartell recover the refrigerator from Harris? What steps should Bartell have taken to protect his interests?

4. Peterson entered into an agreement for the purchase of an automobile under an instalment sales contract. He also purchased new kitchen furniture, and agreed to pay the purchase price within 60 days. How do these contracts differ?

5. Anderson purchased a used car from the Williams Motor Company for \$500 under a conditional sales contract. He made a down payment of \$150 and then failed to meet any of the remaining instalment payments. What are the rights of the Williams Motor Company? What are Anderson's rights?

AS A PRACTICAL MATTER

1. The instalment contracts of ethical firms are likely to be just as fair to the consumer as their other dealings. But tricky sellers can use the fine print to their own advantage. What should you know before signing about such matters as notice before repossession, penalties for late payment, wage assignments, mortgages upon other goods, etc.? (See *Using Consumer Credit*, another unit of this series.)

2. If risk goes with possession, what about your needs for insurance? If you buy an automobile on the instalment plan, the seller will make a charge for insurance. He will keep the policy. Does it cover only *his* risk, or yours as well? For example, will it cover your liability if you damage another person's car or injure someone? If not, what should you do?

3. Should you sign a conditional sales contract before all the cost figures, etc., are filled in?

4. If you wish to move from your community, county, or state while your furniture is still only partly paid for, what steps will you need to take?

5. If you thought of buying used furniture, a second-hand car, or a diamond ring from a stranger (or perhaps from an acquaintance) what steps could you take to make sure you would acquire a clear title? Would these steps give a complete guaranty, or would it be better to stick to persons or dealers in whom you know you can have confidence?

CHAPTER 10

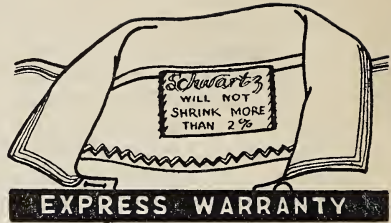
WARRANTIES

EXPRESS WARRANTIES

1. "This book is fit for everybody to read."
2. "The Blank truck will carry safely a load of two tons."
3. "Buy American Steel Common. It will yield a profit of \$25 per share within two weeks."
4. "This washing machine is a new Hamilton model."

Which of the above statements are warranties and which are expressions of opinion?

In the ordinary course of business, sellers or their authorized agents, make statements such as the above to induce buyers to purchase specified articles. The law permits sellers wide latitude in making generalized statements. "Seller's talk" or "puffing" is not supposed to be taken seriously by the buyer since it represents the seller's opinion of the goods. However, if the statements made by the seller are not mere opinions but representations of fact or specific promises regarding the title, identity, or quality of the goods, they will be considered *warranties* or *guaranties*. Since most warranties are expressed by the seller in spoken or written words, they are known as *express warranties*. Which of the above statements are express warranties and which are statements of opinion? Statements numbered 1 and 3 are mere expressions of opinion or seller's talk. Statements 2 and 4 are factual representations which can be proved and are therefore express



warranties. It is important for consumer-buyers to keep in mind that a seller is not liable for express warranties made by an unauthorized agent. A prudent buyer should ascertain the agent's authority before signing a contract or making a purchase. Again, if the contract is in writing, no oral warranty may be claimed—it is always a good policy to obtain warranties or guaranties in writing at the time of the purchase.

IMPLIED WARRANTIES

Title

1. Jones sold an Elgin watch to Brown for \$25. At the time of the sale, Jones did not own the watch which as a matter of fact he had stolen from another. Was Jones liable for breach of warranty?

Unless a contrary intention appears, the law implies that a seller of goods warrants that he has a right to sell the goods and that the buyer shall have and enjoy undisturbed possession of them. If events, subsequent to the sale, show that the seller actually had no title or a defective title, the buyer may sue him for money damages for breach of



warranty of title. Of course Jones would also be subject to prosecution under the penal laws of the state where the theft occurred.

Fitness for Purpose

3. *Bremner decided to purchase a tractor to use on his farm. He described the work to the Farm Machinery Company and asked the company to furnish him with a tractor for the purpose. After two weeks' trial of the tractor, he found that it lacked power and was entirely unsuited for the work. Was there a breach of warranty?*

A buyer may need an article for a known purpose but not know which of several different articles to select. He tells the seller the purpose for which he needs the article and relies wholly upon the seller's skill and judgment in its selection. If the article does not actually fit the purpose for which the buyer purchased it, he may hold the seller liable on an implied warranty that the article is reasonably fit for such purpose. If the buyer does not actually rely on the seller but selects the goods himself or orders goods under a patent or other trade name, no implied warranty of fitness for the purpose exists. The Farm Machinery Com-

pany in the above problem would be liable for breach of the implied warranty of fitness for the purpose.

Fitness for Human Consumption

3. *A customer entered a restaurant and ordered a meal. Because particles of glass were contained in a piece of cake which the waiter served him, the customer sustained injuries to his mouth and throat. What are the customer's legal rights?*

From early times, the courts have recognized an implied warranty that food sold for human consumption is wholesome and fit for use as food. Today this warranty applies to a sale of drugs as well as to a sale of food. Under the provisions of various state and city statutes as well as of the *Federal Food, Drug, and Cosmetics Act* (See Part VII) a criminal liability may exist in addition to the obligation imposed by the implied warranty. The customer in the above case would be entitled to collect damages for the injuries sustained because of the breach of the implied warranty that the food was fit to eat. He may, if he so chooses, sue *in tort* (civil wrong) for negligence. In the latter case, in some states, the manufacturer of the cake would also be responsible to the injured person.

Merchantability

4. *Blaine drove into Volk's gasoline filling station and purchased five gallons of what was advertised as "high octane gasoline," which was put into the gasoline tank of his car. Owing to the inferior quality of the gasoline,*

*his car stalled after several miles.
Was there a breach of warranty?*

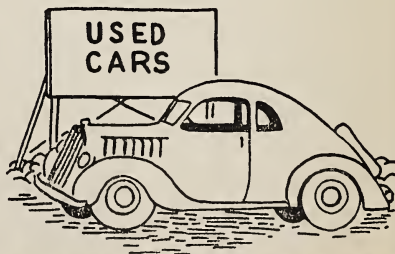
Manufacturers or merchants who sell goods, impliedly warrant that the goods are *merchantable*. Merchantable goods are those of average or medium quality which can be sold in the ordinary course of business. However, if the buyer has an opportunity to examine the goods and fails to notice defects which an ordinary, prudent person would have discovered, then no implied warranty of merchantability exists. In such a case, the old common law maxim applies—"let the buyer beware" (*caveat emptor*). Where a buyer orders an article under its patent or other trade name, there is also no implied warranty of merchantability because the buyer is presumed to know the qualities of the article which he has selected by name. These limitations on the right of the buyer to obtain a merchantable article are becoming less and less important today. The average consumer-buyer has no opportunity to examine many of the articles which he purchases; also few consumer-buyers have sufficient knowledge to judge the construction of an instrument such as a radio, even if all the parts were laid out for their inspection. In such cases, the buyer may rely on an implied warranty of merchantability. In addition, federal, state, and city statutes designed to protect consumer-buyers (See Part VII) have placed a heavy responsibility on sellers of patented or trade-marked articles to furnish the buyer with merchantable foods, drugs, and

cosmetics. Blaine would be legally entitled to sue Volk for breach of the implied warranty of merchantability, or he could bring an action in fraud against him. For the remedies which the consumer-buyer may employ against the seller who is guilty of a breach of warranty or fraud see Part VII.

If a consumer-buyer does not wish to rely on his own judgment, he may demand an express warranty from the seller. As a matter of fact, requiring the seller to warrant his goods, preferably in writing, is a wise purchasing policy. An honest merchant will not be afraid to warrant his goods.

BUYING GOODS "AS IS"

Second-hand or damaged goods are frequently sold to consumer-buyers without an express or implied warranty or guarantee by the seller. To protect his interest, the seller inserts the phrase "as is" into the written contract to warn the purchaser that the articles are being sold in the actual condition that they are in at the time of the sale. The burden of determining the condition of the article is on the buyer. How-



"AS IS"

ever, if the seller makes any fraudulent misstatements of fact as to the "as is" condition of the article and

the buyer relies upon these statements, the contract may be set aside by a court.

IMPORTANT LEGAL PRINCIPLES

1. "Puffing" or "sales talk" is merely the seller's statement of opinion about the goods and should not be relied upon by the buyer.

2. Statements of fact made by a seller of goods which are representations or promises regarding the title, identity, or quality of the goods are known as warranties or guaranties.

3. Warranties made in spoken or written form are known as express warranties.

4. Warranties which the law assumes to be in existence are known as implied warranties.

5. Implied warranties may relate to (1) title, (2) fitness for a particular purpose, (3) fitness for human consumption, and (4) merchantability of goods.

6. Generally, where a buyer has an opportunity to examine the goods offered for sale and fails to detect obvious defects, he may not rely on any implied warranty of merchantability.

7. If a buyer is uncertain about the goods after inspecting them, he should demand and get an express warranty in writing from the seller.

8. Goods purchased "as is" ordinarily carry no warranties either express or implied.

CASE-PROBLEMS

1. Norton, a dealer in used cars told Jackson that a particular car "is a bargain at \$150." Jackson bought the car. Later he discovered that the motorcar was in bad condition, that the radiator leaked, and that other used car dealers had better cars for sale at \$150 than the one he bought. Does Jackson have any legal claim against Norton?

2. When Beem ordered storage tanks from Cobb, a manufacturer, he gave specific and detailed explanations as to the kind of chemicals to be stored in the tanks. When Beem put the tanks into use, the chemicals quickly leaked out and caused considerable damage. Does Beem have a claim against Cobb for breach of warranty?

3. Coleman purchased an oriental rug in good faith from a house-to-house salesman. Later he sold the rug to Bell. Munson proved that the rug had been stolen from him before being sold to Coleman. Did Munson have a legal claim to the rug?

4. In selling window drapes to Mrs. Manning, Kolter stated their colors were fast and would not fade when laundered. They faded a great deal. Is Kolter liable for breach of an express warranty?

5. Wilton sold a second-hand refrigerator to Martin "as is." Later Martin discovered that the motor contained worn-out parts and did not function properly. What are Martin's legal rights?

WARRANTIES IN EVERYDAY PRACTICE

1. This chapter has recommended that when you are in doubt about merchandise you get express warranties in writing. If the article carries a label or tag giving facts about the goods, would this constitute an express warranty? If so, what should you do with the tag?

2. Of what value do you think the term *warranted* or *guaranteed* on a label to be, if there are no specifications as to what is guaranteed?

3. Legally, there is a tremendous difference between a merchant's responsibility for trade puffing and for specific statements of fact. Therefore, you need to make a distinction between them when buying. How can you tell to which class a given statement refers? (See page 41 of *Learning to Use Advertising*, another unit of the Consumer Education Series.)

4. If you buy goods on the strength of statements in an advertisement, will those statements have legal force as express warranties?

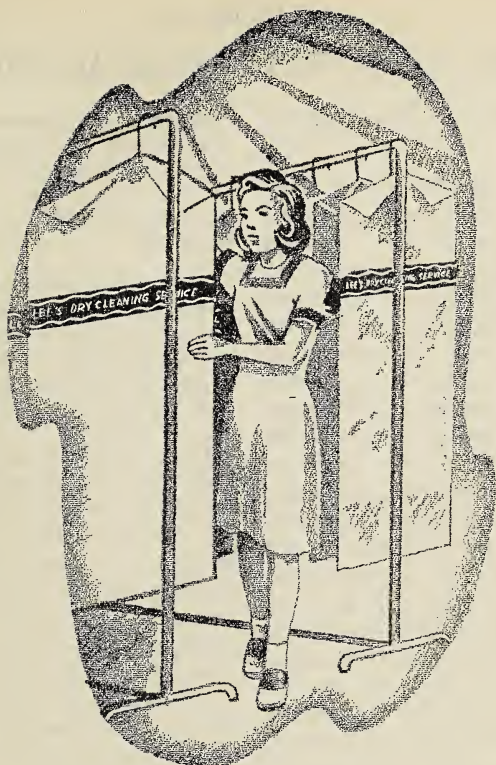
5. Quite aside from legal enforcement of claims, why is it good business method for sellers to state and buyers to understand as exactly as possible the characteristics of goods being sold?

6. Why do you suppose the general implied warranties that apply to all merchandise have been specifically reinforced by statutes in the case of foods, drugs, and cosmetics? Why have these products been singled out?

7. Various laws and trade practice rules specify that when certain words are used on certain goods they must be used with a specified meaning. For instance, the term *wool* in a label, unless it is qualified by other words, must mean *virgin wool*. How does this practice strengthen the exactness of the warranty?

8. Some people frankly tell the merchant they are inexpert as to the goods, and solicit his advice; others disregard his advice as mere sales talk and depend on their own scrutiny of the articles. In which case has the merchant greater responsibility if a purchase turns out badly?

9. It is sometimes said that guaranties are no better than the persons or firms behind them. Which would weigh more heavily in your choice of a store—sensational guarantees or a general reputation for reliability? As a practical matter, even though a guarantee made to you on a \$5.00 purchase was legally enforceable, would you go to law about it if the seller refused to honor it? You see, one always has to balance in his own mind what is legally possible against the trouble and irritation it would cause.)



PART IV
BUYING SERVICE

CHAPTER 11

SERVICES RELATING TO PERSONAL PROPERTY

TYPES OF SERVICES AVAILABLE TO CONSUMERS

In addition to learning how to make a wise selection and use of goods and services purchased, the American consumer needs to know something of the legal aspects of the producer-consumer relationship. In Part III some of the more important legal problems of a buyer of goods were discussed. In the present unit, equal attention will be given to some of the legal problems which may confront a buyer of services. Generally, from a legal viewpoint, consumer services may be classified as (1) services purchased in connection with personal property, and (2) services offered to the general consumer. The first of these two classifications will be discussed in this chapter. The succeeding chapter will deal with the second classification.

SERVICES PURCHASED IN CONNECTION WITH PERSONAL PROPERTY

These services usually include simple, everyday contracts for:

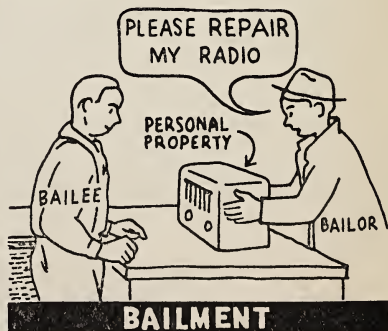
1. *Repairing and Cleaning Service*—vacuum cleaners, typewriters, watches, automobiles, shoes, clothing, rugs, etc.
2. *Renting Service*—automobiles, bicycles, typewriters, sewing machines, books, clothes, etc.
3. *Storing and Safekeeping Service*—household furniture, automobiles, furs, jewelry and other valuables.
4. *Incidental Services Rendered in Other Contracts*—checking hats and coats in restaurants and theatres,

delivering old garments and personal belongings to proprietor of store while purchasing new ones.

GENERAL NATURE OF CONTRACT FOR SERVICES

1. *Butler purchases and receives a radio from the Simmons Radio Co. for \$45.*
2. *Butler delivers his radio to the Simmons Radio Co. to have it repaired. Contrast the legal relations created in the above situations.*

In a purchase of goods, the seller parts with the title and possession of the goods according to the terms of the contract. In a contract for services, the owner of personal property delivers it temporarily to another person for the purpose of having work performed on it, or for some other particular reason. In such a contract there is no intention on the part of the owner to transfer his title. The owner of the article who parts with its possession is known in the law as a *bailor* and the person to whom possession is entrusted is known as a *bailee*. The contract for



services is referred to as a *bailment contract*. This contract must contain the essentials prescribed by law for all valid contracts, namely, mutual assent, competent parties, consideration, and legality of purpose. It need not be in any particular form. It is usually made in oral form except where by its terms it is not to be performed within one year from the time made.

Any kind of *personal* property, including money, may be the subject of a bailment. A bailment contract cannot arise unless the article bailed is delivered to and accepted by the bailee. However, a person who takes possession of lost property is legally regarded as a bailee for the true owner. In problem 1, since both title and possession have been transferred to Butler and no redelivery of the property is contemplated by the parties, the transaction is a sale and the relationship created between the parties is that of buyer and seller. In problem 2, Butler merely delivered the radio for the purpose of having repairs made. There was no intention to transfer title to the radio; hence the relationship of bailor and bailee was created.

REPAIRING AND CLEANING SERVICE

1. *Jane sent her new evening gown to a local tailor for cleaning and pressing. Several days later, she called for the gown and found that the tailor had damaged it while it was being pressed. Is the tailor liable to Jane?*

One of the most common bailments relating to services purchased in connection with personal property is that of repairing and cleaning.

Sending a garment to a tailor for cleaning, a watch to a jeweler for repairs, a pair of shoes to a shoemaker, or a motorcar to an auto mechanic for repairs are just a few of the everyday contracts for services which consumers make with bailees. A bailee for repairs or cleaning is required by law to exercise ordinary skill in performing the required work. Ordinary skill means that degree of skill possessed by a capable and reasonably prudent person engaged in the same type of business. A dyer, for example, should know that in certain instances a rayon dress will shrink when dyed, since such knowledge is or should be part of his equipment for carrying on his business. In addition to exercising ordinary skill in performing the services contracted for, the bailee must safeguard the bailor's property by taking ordinary care of it; i.e., giving the same type of care which the bailee ordinarily would give to his own property. Failure by the bailee to exercise ordinary care implies that he is guilty of ordinary negligence and renders him liable in damages to the bailor. The measure of damages where the bailee performs unskillfully or fails to exercise ordinary care is usually the value of the article at the time of the loss. Inasmuch as proof of negligence on the part of the bailee is usually difficult to show, the bailor, especially in a bailment for repairs, should try to obtain a *written guarantee* that the repairs will suffice to keep the article in good working order for a given length of time. If a written guarantee cannot be obtained, the bailor

should deal only with highly reliable bailees.

If the article to be cleaned or repaired is destroyed or stolen while in the possession of the bailee without any fault on his part and before the work is completed, the bailee is not liable for the loss and is entitled to collect for the work done or materials used up to the time of the loss. Since the tailor in problem 1 did not exercise ordinary care in pressing the gown, he is liable to Jane for its value.



BAILEE'S LIEN

2. Perkins left his automobile with Johnson, a mechanic, in order to have the water-pump repaired. After the repairs were properly made, Perkins sought to obtain possession of the automobile on a promise to pay for the repairs on the first of the following month. Johnson, however, refused to give up the car until the bill was paid. What are the legal rights of the parties?

A bailee who alters, repairs, or in any way enhances the value of an article of personal property, has a *lien* on such an article while lawfully in possession of it. A lien is a legal right to retain possession of an article until all charges have been paid. A lien cannot exist without possession of the property by the bailee who made the repairs or otherwise enhanced its value. If the bailee parts with the possession of the property, his lien is lost or forfeited. The lien is not restored if the same property should come into the bailee's possession at a subsequent time. Johnson was within his legal

rights in the above problem when he refused to give up Perkins' car until the charges were fully paid.

RENTING SERVICE

1. Henry rented a bicycle for an hour from a neighborhood bicycle shop. Before returning the bicycle, Henry permitted his friend Walter to use it. Although using ordinary care, Walter wrecked the bicycle. Is Henry liable for the damage?

Another familiar contract for services relating to personal property is that of hiring or renting. Many articles such as typewriters, sewing machines, refrigerators, motor vehicles, evening clothes, theatrical equipment, and books are rented to consumers. As in a bailment for cleaning and repairing, the bailee must take ordinary care and is liable to the bailor for ordinary negligence. The bailee must use the article only in accordance with the terms of the contract. The bailee is responsible for injuries to third persons caused by his negligent use of the bailed article. The bailee must return the article upon termination of the bail-

ment and pay the agreed rental unless such rental was paid in advance.

In the foregoing problem, since Henry deviated from the terms of the contract by allowing his friend Walter to use the bicycle, he is responsible for the damage regardless of the degree of care exercised by his friend.

STORING AND SAFEKEEPING SERVICE

1. *Smith stored his motorcar in a steam-heated garage. One morning, when Smith called for his car, he found that the water in the cooling system was frozen and that the water jackets had burst. Is the garagekeeper liable for the damage?*

When parties agree for a consideration that one of them shall store or keep specific articles for the other in a garage, warehouse, parking lot, or safe-deposit vault, a bailment for storage or safekeeping is created. The bailee, in a contract for storage and safekeeping, must return the identical articles to the bailor upon termination of the bailment. He must not use the stored articles for his own purposes. In performing the contract, he must exercise ordinary care and must possess the skill and knowledge ordinarily expected from a bailee of this type. If the bailee redelivers the stored articles to the wrong person, he will be liable to the bailor regardless of his good faith or degree of care exercised. Like bailees who alter, repair, or enhance the value of personal property, garagekeepers and warehousemen have a lien on the stored articles for the storage charges. In problem 1

above, the garagekeeper would be liable in damages to Smith for failure to exercise the degree of care and skill which is ordinarily expected from garagekeepers. The bailor, Smith, had a right to expect that the temperature would be kept above the freezing point and if the garagekeeper was unable to do so, he should have in the exercise of ordinary care drawn off the water from the cooling system or taken other obvious precautions to prevent the water from freezing.

2. *Allen parked his car in an outdoor enclosed parking lot where attendants were on duty at all times. One of the attendants collected a fee of 50 cents from Allen and issued to him a numbered ticket or claim check. Allen was also required to leave his keys in the car and not to lock the doors. Later, when Allen called for his car, he learned that it had been stolen. Is the owner of the parking lot liable to Allen?*

Generally, when an owner of an automobile, for a consideration, leaves his car on a well-ordered enclosed parking lot having attendants on duty at all times, a bailment relationship arises. This is especially true where the owner of the vehicle receives a numbered ticket or claim check and is also required to leave his car unlocked. The owner of the parking lot and his employees are required to exercise ordinary care and are liable for ordinary negligence. If the car is delivered to the wrong person through the carelessness of the owner of the parking lot or his employees, the latter is liable in damages to the owner of the car.

However, when the owner of a car regularly parks it on a certain lot where he is assigned a definite space and where he habitually places his car and removes it without actual delivery to or redelivery by the proprietor of the lot and without receiving any ticket or claim check, no bailment relationship is created. The relationship which does arise is more in the nature of landlord and tenant.

Courts have held that where an owner of an automobile leaves his car in an outdoor open parking place adjacent to a ball park, race track, or public beach, etc., a mere rental of space rather than a bailment for storage or safekeeping arises. In such parking places, a large number of cars arrive and leave at approximately the same time. A surrender of each car to the proprietor of the parking station to be redelivered to the proper owner, would require a large force of employees, and multiple checks to identify the car and the driver when the car was removed from the parking ground. Such a requirement, according to the courts, would result in delay, annoyance, and additional expense, and in defeat of the very convenience which such a station provides for the public. In problem 2, a bailment relationship was created and Allen could hold the proprietor of the parking lot liable for his car.

3. *Harris rented a safe-deposit box from the First National Bank and placed some stock certificates, jewelry and U. S. war bonds in it. Is there a bailment relationship between Harris and the bank?*

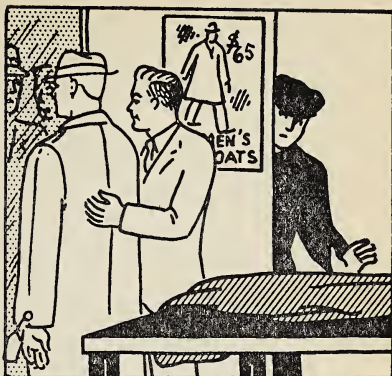
A bailment relationship is often created when a person rents a safe-deposit box in a bank or safe-deposit company. Strictly speaking, the contents of the safe-deposit box are not actually delivered to the company. The bailor receives a key and the safe-deposit company retains a similar key. Both keys must be used to open the box. However, since the company is in control of the box when the bailor is not present, most courts have held the safe-deposit company liable as a bailee. The fact that the safe-deposit company does not know the character or description of the contents is immaterial. The company, like other bailees, owes to its customer the duty to return or account for the property deposited. It is incumbent upon the company to make the contents available to the depositor. A loss by robbery or burglary will excuse the company from its obligations to redeliver the contents of the box only if it has exercised ordinary care to prevent such loss. In problem 3, a bailment relationship exists between Harris and the First National Bank.

INCIDENTAL SERVICES RENDERED IN OTHER CONTRACTS

1. *Harper, in order to try on a new overcoat offered for sale by the Williams Department Store, took off his own coat at the direction of a salesperson and laid it aside on a nearby table. Subsequently, Harper's coat was stolen. What is the liability of the department store?*
2. *Assume in problem 1 that Harper decided to wait upon himself and laid his overcoat on a nearby table without the knowledge or consent of*

the salesperson. What is the liability of the department store?

Frequently, the relationship of bailor and bailee arises incidentally in connection with the performance of another contract such as a contract for the purchase of wearing apparel. In the performance of the purchase contract, it is essential for the buyer to lay aside his own garments in order to try on the new ones. If this act is performed at the direction of the seller or his duly authorized agent, or with his knowledge and consent, a bailment arises and the proprietor of the store becomes the bailee of the customer's old garments. However, it is important to keep in mind that the proprietor becomes a bailee of the garment only, not of any articles contained in the pockets of the garment unknown to the proprietor. If a customer proceeds on his own initiative to wait upon himself without the proprietor's knowledge and consent and loses his old garments, no bailment relationship is created and the proprietor is not liable for the value of the old garments—the elements of delivery and acceptance by the bailee are lacking. Where a customer enters a restau-



rant and hangs up his coat on a hook near his table, the proprietor is not considered a bailee of the coat, especially when checking facilities are provided. If a patron of a restaurant or a theatre checks his hat and coat, the proprietor of the establishment is liable as bailee. In some states the liability of a restaurant-proprietor is limited by statute, but notice of this limitation of liability must be brought to the attention of the customer. In problem 1 the Williams Department Store would be considered a bailee of Harper's overcoat; while in problem 2 it would not be held liable for the loss of the coat.

IMPORTANT LEGAL PRINCIPLES

1. *A bailee for repairs or cleaning is required by law to exercise ordinary skill in performing the required work. Ordinary skill means that degree of skill possessed by capable and reasonably prudent persons engaged in the same type of business.*

2. *In addition to exercising ordinary skill in performing the services contracted for, the bailee must safeguard the bailor's property by taking ordinary care of it; i.e., same care which the bailee would ordinarily take of his own property.*

3. *If the article to be cleaned or repaired is destroyed or stolen while in the possession of the bailee without any fault on his part and before the work is completed, the bailee is not liable for the loss and is entitled to collect for the work done or materials used up to the time of the loss.*

4. *A bailee who alters, repairs, or in any way enhances the value of an article of personal property has a lien on such article while lawfully in possession of it.*

5. *In a contract for renting service, the bailee must use the article only in accordance with the terms of the contract; a deviation, however slight, will render the bailee liable if the article is damaged.*

6. *The bailee, in a contract for storage and safekeeping service, must return the identical articles to the bailor upon termination of the bailment. He must not use the stored articles for his own purposes.*

7. *If a customer is requested to lay aside his old garments in order to try on new ones, a bailment relationship arises and the proprietor of the store becomes the bailee of the customer's old garments.*

CASE-PROBLEMS

1. Bingham goes to a theatre and purchases a ticket for a box seat. He hangs his hat and overcoat directly behind him on a hook provided for the purpose although the theatre has adequate checking facilities. His hat and coat are stolen during the performance. Is the theatre liable?

2. Grant paid a public garage one dollar for keeping his car overnight and received a receipt and claim check. The next morning when he called for his car and presented his claim check, it was discovered that the garage had given the car to a person who represented himself to be Grant. Can Grant hold the garage liable for the loss?

3. Mrs. Spear rented several books on the best-seller list from a lending library maintained by Jones, a neighborhood druggist. She loaned one of the books to her friend, Mrs. Brown, who accidentally damaged it. Is Mrs. Spear liable for the damage to the book?

4. Walters parked his car on a temporary, unenclosed, outdoor parking lot adjacent to a football stadium. An attendant collected a fee of twenty-five cents and gave him a claim check. Walters was not required to leave his key in the car and the doors unlocked. When Walters claimed his car after the game, he found that it was missing. Is the proprietor of the parking lot liable for the car?

5. Hopkins entered the Lincoln Shoe Shop in order to purchase a new pair of shoes. A salesman removed Hopkins' old shoes, determined the proper size, and laid them on a nearby chair. After purchasing the new pair of shoes, Hopkins discovered that his old shoes were missing. Can Hopkins hold the Lincoln Shoe Shop liable?

6. Allison left a watch with Morgan, a jeweler, to be cleaned and repaired. When the repairs were completed, the jeweler refused to

let Allison have the watch until the repair charges were paid. Has Morgan a legal right to do so?

7. Wesson delivered his typewriter to the Acme Typewriter Company for a complete overhauling. After the work was completed and before the company had an opportunity to redeliver the typewriter to Wesson, it was stolen from the shop. The company claims that it took ordinary care in safeguarding the machine and that it was entitled to receive payment for the work done and the materials supplied. Is this claim legally valid?

COMMON-SENSE APPLICATIONS

1. When you are entrusting your personal goods to a bailee, which do you feel to be more important, your legal rights in the matter or the reliability of the bailee? For example, it has been reported that dishonest watch repairmen have removed high grade "works" from watches, returned the case with a cheap set of works. If you were to set out to devise an absolutely foolproof system for preventing such treatment, or recovering damages for it, what procedures would be involved?

2. Do you know of actual cases in which difficulties arose out of bailments? What were the causes? How were they settled? Could they have been avoided by proper preliminary arrangements?

3. Students sometimes earn money by parking cars on vacant lots during a football game. When they do so, what liability are they accepting?

4. Do you think it is necessary to keep a duplicate list when sending clothes to the laundry? Why?

5. In many cases a claim check is issued for articles left in storage. It does not specify what has been stored. If you did not feel altogether sure of the transaction, how could you protect yourself?

6. The garageman has a lien on your car until you pay his bill. How can you make sure that the bill will not be unduly high, or that it will not cover work you have not authorized?

SERVICES OFFERED TO THE GENERAL CONSUMER

KINDS OF SERVICES AVAILABLE TO CONSUMERS

In the preceding chapter, it was stated that generally consumer services could be classified as (1) services purchased in connection with personal property, and (2) services offered to the general consumer. Four distinct types of services purchased in connection with personal property were identified and explained; namely, repairing and cleaning service, renting service, storing and safekeeping service, and incidental services rendered as part of other contracts. The second classification—services offered to the general consumer—may consist of contracts for (1) transportation of passengers, (2) accommodations at hotels, and (3) public utility services for the home.



Persons and goods are usually transported from place to place either by public or private carriers. A *public carrier* is one who undertakes for a compensation to transport all persons who may apply except those who are not ready and willing to pay the required fare and those who refuse to abide by the carrier's reasonable rules and regulations. Common examples of public carriers are railroads, ferries, steamships, busses, street cars, taxicabs, and airlines. A *private carrier*, on the other hand, undertakes to transport persons only as the result of a special contract made with each individual. A private carrier may select its patrons while a public carrier, generally, may not. Public and private carriers also differ as to their liability for the baggage belonging to passengers. This liability will be discussed later on in this chapter. In problem 1 Jones is considered a

TRANSPORTATION OF PASSENGERS

Public and Private Carriers

1. Jones owned a station wagon which could accommodate eight passengers. He agreed with the local Board of Education to transport several school children from their homes to the local grade school each school day, for a stipulated weekly compensation. Is Jones a public or private carrier of passengers?
2. Williams, a licensed cab driver, affixed a sign to the windshield of his passenger automobile reading "Public Cab" and parked at a corner of a busy intersection. Is Williams a public or private carrier of passengers?

private carrier inasmuch as he transports school children exclusively, as a result of a special contract made with the Board of Education. In problem 2, however, Williams is considered a public carrier of passengers since he holds himself out as ready to transport all who may choose to employ him.

Who Are Passengers?

3. *Hill purchases a bus ticket and enters the waiting room at the bus terminal until the arrival of his bus. Is Hill a passenger?*
4. *Johnny Brown, a lad of sixteen, boards a passenger train in order to sell newspapers. He did not obtain the permission of the company. Is Johnny a passenger?*

The relationship of carrier and passenger arises when the person who intends to become a passenger enters the premises of the carrier. The fact that the person has not as yet purchased a ticket or paid the required fare does not prevent the relationship from arising. Persons who temporarily leave the vehicle or car at a regular station—to send a telegram or obtain refreshments at a railroad station, for instance—are nevertheless regarded as *passengers*. However, a person who enters the vehicle or cars of a carrier without permission, in order to sell commodities to the passengers, is not considered a passenger. A person traveling on a free pass is regarded as a passenger. In problem 3, above, Hill is legally considered a passenger since he purchased a ticket and remained on the premises of the public carrier. In problem 4, Johnny Brown

is considered a trespasser, since he had neither purchased a ticket nor secured the permission of the company to enter upon its premises.

Rights and Duties of a Public Carrier of Passengers

A public carrier of passengers possesses the right to make reasonable rules and regulations for the safe transportation of its passengers. These rules generally relate to (1) the purchase of a ticket before boarding a train, (2) limitation of time within which a ticket may be used, (3) leaving a train while the cars are in motion, (4) charging an additional fare when a ticket has not been procured before entering the train. The carrier also has the right to charge a reasonable compensation for its services. Rates of interstate carriers are regulated by the Interstate Commerce Commission while Public Service Commissions usually regulate rates of intrastate carriers. The public carrier is under a duty to (1) provide reasonable accommodations for its passengers, (2) accept all applicants except those unwilling to pay the required fare and abide by the reasonable rules and regulations of the carrier, and (3) protect passengers from injuries inflicted by fellow passengers or employees of the carrier.

Liability for Injuries to Passengers

5. *Henry Wilks was riding to school in a publicly operated bus. Due to the negligence of the driver in bringing the bus to a sudden stop, Harvey fell and was severely injured. Is the bus company liable for the injuries?*

A public carrier does not guarantee the safety of its passengers; i.e., it is not liable as an insurer of the passenger's life. However, it must exercise the utmost skill and diligence in preventing injuries to its passengers. Where the passenger is himself guilty of negligence, the carrier is not liable. If the vehicle is improperly operated by the carrier's servants and employees, the carrier is held liable for any injuries incurred by passengers. There seems to be no general agreement among courts on a carrier's right to limit by contract its liability to a passenger for the negligence of its employees. Some courts maintain that such a contract is contrary to public policy and void. Many permit a carrier to limit its liability to a passenger who is being carried free of charge or at a reduced rate of fare. Henry Wilks, in the above problem, could hold the bus company liable for the negligence of its employee in improperly operating the vehicle and causing his injuries.

Liability for Baggage

6. *Peterson, a passenger on the Twentieth Century Limited, bound for Chicago, checked his trunk at the railroad station. His trunk contained the following articles: a suit of clothes, a set of golf clubs, a camera, presents for his relatives, samples of merchandise Peterson intended to sell in Chicago, and toilet articles. Which of the foregoing articles are legally considered baggage?*

One of the duties of a public carrier, under the terms of a contract to transport a passenger, is to carry

a reasonable amount of baggage. *Baggage* may consist of any articles which a traveling person may take with him for his pleasure, convenience, and comfort. Generally, baggage does not include articles for sale, articles belonging to others, and gifts. The carrier is an insurer of the baggage which a passenger has delivered or checked with him. As an insurer, the carrier is liable for baggage regardless of the degree of care exercised by him. However, when a passenger retains baggage in his own possession, usually known as *hand baggage* or *luggage*, the liability of the carrier is that of an ordinary bailee. Carriers often limit their liability for baggage checked with them. Baggage checks usually contain a clause limiting the liability of the carrier to a sum of \$50 or \$100. The liability of the carrier as an insurer of baggage continues until the passenger has had a reasonable time to call for and take away his baggage. In the above problem, the suit of clothes, the camera, the set of golf clubs, and the toilet articles are considered baggage. The samples of merchandise and the gifts for Peterson's relatives are not considered baggage inasmuch as they are not essential to his pleasure, convenience, and comfort.

ACCOMMODATIONS AT HOTELS

1. *Mr. Hart and his family toured the United States. Their accommodations included the following: city hotels, tourist homes and cabins, Pullman cars, steamships, boarding and lodging houses, and restaurants. Which of the foregoing are legally considered to be hotels?*

A hotel is a public establishment where transients are admitted and receive accommodations for a compensation. The accommodations may include food and lodging or lodging only. *Transients* are defined as persons "who come without any bargain for time, remain without one, and may go when they please, paying only for the actual entertainment which they receive." Boarding and lodging houses are not considered hotels because the owners do not hold themselves out to accept all persons who may apply for accommodations. Their arrangements with their patrons are usually on a fixed or definite time basis. Restaurants, steamships, and sleeping car companies are not legally regarded as hotels. Restaurants do not provide lodging while steamships and sleeping car companies may select their

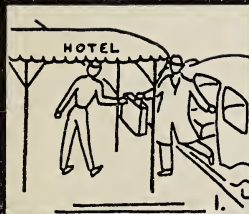
patrons. Tourist homes and cabins offering accommodations to the general public are considered hotels. Whether an establishment is a hotel or a boarding house is a very important consideration when the question of liability for theft of the guest's belongings arises.

Who Is a Guest?

2. *The Sigma Alpha fraternity of Wilson High School held its annual dinner at the Hotel Sheraton. Are those attending the dinner legally considered guests of the hotel?*

Legally, a person becomes a *guest* of an inn or hotel when he signs the hotel register or when he delivers his baggage to an employee of the hotel and subsequently registers for a room. Persons who use the facilities of a hotel for the purpose of attending a social function, writing letters,

These are guests of the hotel:



These are not guests of the hotel:



or checking personal property are not guests in the legal sense. The relation of hotelkeeper and guest begins when the latter is accepted by the hotelkeeper and terminates when the guest pays his bill and departs. Frequently, a guest may change his status to that of a *boarder* by making a definite or permanent arrangement for accommodations.

Duties and Liabilities of a Hotelkeeper

1. *Benge registered at a hotel. A sign at the registration desk and printed notices in each room of the hotel read, "Not responsible for any money, jewels, ornaments, bank notes, bonds, negotiable securities and precious stones unless checked." Besides his clothing and toilet articles, Benge brought with him a gold watch, a portable typewriter, a \$500 U. S. war bond, a diamond ring, and \$400 in cash. Benge fails to comply with the notice. For which of the foregoing articles would the hotel be liable?*

A hotelkeeper is under a legal duty to serve all transient guests who are ready and willing to pay for their accommodations. However, no such duty exists when there is no room available or when the applicant is known to be a disreputable person. A hotelkeeper is not an insurer of the safety of the person of his guest. He is, however, under a duty to exercise reasonable care and diligence in safeguarding the guest from injury. The common law imposed the extraordinary liability of an insurer on hotelkeepers for the personal belongings of their guests. Only losses due to an Act of God or the negligence of

the guest excuse the hotelkeeper from liability as an insurer. Today, statutes in many states have changed this *common law liability*. A hotelkeeper is permitted to limit his liability for the valuables belonging to his guest if he provides a safe in the office of his hotel for the safekeeping of valuables such as money, jewels, ornaments, etc. Notice to the effect that liability has been limited must be posted in a conspicuous place such as the registration desk and in the rooms of the hotel. In New York, the statutory liability for valuables checked with the hotelkeeper is \$500. Failure on the part of the guest to comply with the terms of the printed notice relieves the hotelkeeper of any liability for property mentioned therein. Benge, in the above problem, should have checked the war bonds, the diamond ring, and the money. For the remaining articles the hotel is liable as an insurer.

Hotelkeeper's Lien

2. *Phillips is a guest at the Hotel Edison. He owes the hotel for a month's accommodations. Phillips attempts to leave the hotel without paying the bill, but the manager takes possession of Phillips' suitcase and refuses to give it up until the bill is paid. What are the legal rights of the parties?*

A hotelkeeper has a lien upon all of the belongings of his guest brought into the hotel. It is immaterial if the articles in the guest's possession do not belong to him provided that the hotelkeeper has no knowledge of this fact. The value of the articles subject



to the lien may exceed in value the amount of the unpaid hotel bill. If the hotelkeeper parts with the possession of the guest's belongings, he loses his lien. In New York, by statute, the right of lien is also given to operators of boarding and lodging houses. In the above problem, the manager of the hotel is within his legal rights in refusing to release Phillips' baggage inasmuch as the hotel has a lien until the bill is paid.

PUBLIC UTILITY SERVICES FOR THE HOME

Most states, through special regulatory bodies such as a Public Service Commission, imposed special obligations on public utility corporations

supplying electric light and power, gas, and telephone service. Because these corporations enjoy a monopoly over utilities which are of vital importance to consumers, they must serve all legitimate applicants for their services without any discrimination and at fair rates. If their facilities are inadequate to meet the reasonable demands of the community, they must increase them. Sometimes, as in the case of gas and electric service, the company may require the consumer to pay a deposit equivalent to the value of a month's service. This deposit is usually refunded with interest after the consumer has demonstrated his good faith or after the contract for service has been terminated. Ordinarily complaints against a public service corporation on account of the service rendered, charges made, or for any other reason should first be made to the company concerned. Seldom does a public service corporation neglect to remedy a legitimate complaint made by one of its consumers. However, if the corporation refuses to take action, then the consumer should apply to the Public Service Commission, which will issue the necessary orders to the company after investigating the facts of the case.

IMPORTANT LEGAL PRINCIPLES

1. *The relationship of public carrier and passenger arises when the person who intends to become a passenger enters the premises of the carrier.*

2. *A public carrier of passengers is not an insurer of the safety of the person of its passengers.*

3. *A public carrier of passengers must exercise the utmost skill, diligence, and caution in the operation of its conveyance, and is liable for even slight negligence in this regard.*

4. *A public carrier of passengers is liable as an insurer for the baggage which a passenger has delivered or checked with him.*

5. *When a passenger retains baggage in his own possession, the liability of the carrier is that of an ordinary bailee.*

6. *Baggage may consist only of articles which a passenger needs for his pleasure, convenience, and comfort. It does not include articles for sale, articles belonging to others, and gifts.*

7. *A person becomes a guest of an inn or hotel when he signs the hotel register or when he delivers his baggage to an employee of the hotel and subsequently registers for a room.*

8. *Persons who use the facilities of a hotel for the purpose of attending social functions, etc., are not legally guests of the hotel.*

9. *A hotelkeeper is not an insurer of the safety of the person of his guest.*

10. *At common law, the hotelkeeper is an insurer of the personal belongings of his guest. However, in most states by statute the hotelkeeper may limit his liability if proper notice of this fact is given to the guest.*

11. *A hotelkeeper or boarding-house keeper has a lien upon the belongings of his guests for unpaid bills.*

CASE-PROBLEMS

1. Bennett was a cabin passenger on the night boat to Albany. He carried with him \$200 for expenses. When he entered his stateroom he locked the door and fastened the window. The money was stolen from the stateroom. May Bennett hold the steamship company liable as a hotelkeeper?

2. Would your answer to problem 1 be the same if Bennett were a passenger on a Pullman car?

3. Blake enters the restaurant of the Hotel Midwood and orders a meal. Is Blake a guest of the hotel?

4. Would your answer to problem 3 be the same if Blake had registered for a room first?

5. Wilkins engages a room at Mrs. Bell's Boarding House at the rate of \$12 per week. Is Wilkins a guest or a boarder?

6. Primrose installs an electrically lighted sign in his front yard which reads as follows: "Transients welcome. Rooms \$1.50 and up." Is Primrose a hotelkeeper?

7. A salesman arrives at a bus terminal and gives his baggage to a porter from the Hotel Lincoln. When he reaches the hotel, he learns that his baggage has been lost. The salesman claims that he is a guest and that the hotel is responsible as an insurer of the baggage. Is his claim legally correct?

8. Clancy, a guest at the Arlington Hotel, placed jewelry and money having a total value of \$300 in the safe in accordance with rules posted by the hotel management. The valuables were stolen through no fault of the hotel. Is the hotel liable to Clancy?

9. Walton's overcoat was stolen from his hotel room. He claims that the hotel is responsible and should reimburse him. Is his contention legally correct?

10. Masters failed to pay his hotel bill when it came due. The proprietor of the hotel seized Masters' belongings and refused him the privileges of the hotel. Masters claimed that the property was many times the value of the bill and demanded part of the baggage. The proprietor refused to release any of the property until the bill was paid. What are the legal rights of the parties?

11. Jones obtains a free pass to travel to Chicago via the New York Central Railroad. Is Jones legally considered a passenger?

12. Little while on the way to a railroad station is knocked down by an automobile and severely injured. Little claims that inasmuch as he had already purchased a railroad ticket, the railroad company should be held liable for his injuries. Do you agree with him? What would be your answer if Little were injured while waiting for a train on the station premises?

13. Simson, while traveling by train from New York to St. Louis, checked his suitcase as baggage. While in transit, the suitcase was stolen. The railroad company claimed that it had exercised ordinary care and was not liable. Is this claim valid?

14. Butler, on entering a passenger train, placed his suitcase on a rack above his seat. While Butler went to the smoking car, his suitcase was stolen. Is the railroad liable for the suitcase?



PART V
BUYING INSURANCE

CHAPTER 13

UNDERSTANDING ONE'S INSURANCE CONTRACT

There are approximately 150 million life insurance policies held by 71 million different persons in this country, to say nothing of the billions of dollars' worth of property insurance. As a people, we believe in buying insurance. Statistics show conclusively that few of us can afford the attitude "it can't happen to me."

Generally speaking, insurance contracts relate either to life or to property. In each of these two classes there are many different kinds of insurance contracts. In this unit we shall consider only the more common forms of life and property insurance which affect the daily lives of consumers. Every contract of insurance contains provisions which define the legal rights and obligations of the parties concerned. Some of these rights and obligations are suggested by the following legal problems.

SOME LEGAL PROBLEMS OF A POLICYHOLDER OF PROPERTY INSURANCE

1. May a person insure property in which he has no financial interest?
2. May a contract of insurance on property be made over the telephone?
3. Does "loss by fire" in fire insurance policies include theft and water damage while goods are being removed from a burning building?
4. If a fire is caused by the gross negligence of the insured, may he collect for the loss?
5. If a person insures his property at its full value in each of two or more insurance companies, may he, in case of loss, recover the full amount of the loss from each company?
6. Suppose my neighbor's house is burning and smoke damages my furnishings; may I collect under my fire insurance policy?
7. If I should leave my apartment vacant for two weeks while I am away on a vacation, do I need the permission of the insurance company?
8. How long may I wait before reporting a loss to the insurance company?
9. If I cancel a policy of property insurance, how much am I entitled to receive as a premium refund?
10. Am I permitted to transfer or assign my policy when I dispose of the insured property? If so, under what circumstances?
11. Am I permitted to change the location of the insured property without the consent of the insurance company?
12. What amount will the insurance company pay in case of a loss by fire, theft, etc.?
13. My automobile is covered by a policy of fire and theft insurance. If a package is stolen from the automobile, am I entitled to collect?

14. If the insured is speeding and a collision occurs, may he collect under a collision policy?
15. If I should permit a friend of mine to drive my car and he crashes through a store window, does my property damage policy cover this loss?

SOME LEGAL PROBLEMS OF A POLICYHOLDER OF LIFE INSURANCE

1. Under what circumstances may I take out a policy of life insurance on my brother's life?
2. Suppose I lend my friend Mack \$1,000. Am I legally permitted to insure his life for at least this sum? If he repays the loan, is the policy void?
3. Suppose I decide to change the beneficiary of my life insurance policy; under what circumstances am I entitled to do so?
4. How old must a person be to enter into a valid contract of life insurance?
5. What is the effect of a misrepresentation by the insured of his age?
6. Would I lose all my premiums if I paid for several years on a straight life insurance policy and then allowed the policy to lapse?
7. What is meant by the incontestable clause in a policy of life insurance?
8. If I should allow a policy of life insurance to lapse, under what conditions may I have it reinstated?

9. If I allow my policy of life insurance to lapse, what options are available to me besides accepting the cash surrender value?

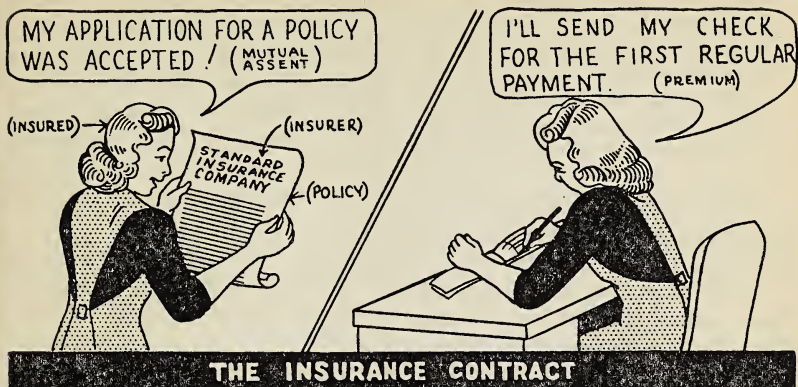
In order to understand the rights and obligations of the parties in the foregoing problems, it is necessary to consider the general nature of the insurance contract and in subsequent chapters to make a detailed analysis of the important provisions of property and life insurance contracts.¹

NATURE OF THE INSURANCE CONTRACT

When purchasing goods and services the consumer is constantly entering into contracts. The insurance contract is an illustration of one of the more important protective services which the consumer buys. The validity of an insurance contract, like any other, depends upon the existence of the essentials: mutual assent, competent parties, consideration, legality of purpose, and proper form of execution. In many states some of these common law essentials are modified by statute law. In New York, for example, a minor fifteen years of age may enter into a binding contract of life insurance.

The insurance contract differs, however, from other contracts in the following respects: (1) The written contract of insurance is known as the *policy*. (2) The parties to the contract are known as the *insured* and the *insurer*. (3) Mutual assent is evidenced by an offer in the form of an application for insurance made

¹ A more detailed discussion of insurance contracts is available in Unit 8 of the Consumer Education Study series: *Buying Insurance*.



by the insured and its acceptance by the insurer usually by the issuance of a policy, although that is not always necessary to complete the contract. (4) The consideration is called the *premium*. (5) The subject matter of the contract is the assumption of a risk and payment of an indemnity to one who has an insurable interest and who has suffered a loss.

Written contracts of insurance sometimes take the form of *binding slips* which give temporary protection to the insured until a formal policy is issued. Thus, a "binder" on property may be obtained and a valid contract of insurance entered into over the telephone. The contract is effective as soon as the agent of the insurance company accepts the offer of the prospective insured.

INSURABLE INTEREST

1. Romer insured his automobile against fire and theft. Thereafter, he sold and delivered the car but did not cancel his insurance policy. If the car is damaged by fire, may Romer collect from the insurance company?

When property is insured against loss due to fire, accident, or theft, the insured must have an *insurable interest* in such property. A person is said to have an insurable interest in property when its destruction will cause him to suffer a financial loss. Thus, the owner of a house has an insurable interest in his property. A tenant has an insurable interest in his household furnishings and personal belongings. Both mortgagor and mortgagee have insurable interests in property. Stockholders in a corporation and partners in a partnership have insurable interests in the property of their respective organizations. It is exceedingly important to remember that the insurable interest in property must exist at the *time of the loss*. If the insured has disposed of his insurable interest prior to the occurrence of a loss, the policy is void and he will be unable to collect from the insurer. In problem 1, Romer disposed of his insurable interest before the loss occurred; therefore, he will be unable to collect under the policy.

2. *Peters, in order to complete his college course, borrows \$1,500 from his uncle. In order to protect his interest, the uncle believes it wise to take out an insurance policy on the life of Peters. Does the uncle have an insurable interest in the life of Peters?*

A person, obviously, has an insurable interest in his own life. Whether or not one has an insurable interest in the life of another person depends upon whether the death of the insured person will cause financial loss to the one taking out the insurance. A creditor has an insurable interest in the life of the debtor, but not in excess of the amount of the indebtedness. Both husband and wife have insurable interests in each other's lives and in the lives of their minor children. Blood relationship alone, without the element of support, does not give rise to an insurable interest. A beneficiary under a life insurance

policy need not have an insurable interest in the life of the insured in order to collect on the policy. In problem 2, the uncle had an insurable interest in the life of his nephew Peters. This insurable interest arose not from mere kinship but from the fact that the nephew owed his uncle \$1,500.

3. *Assume in problem 2, that Peters repays the loan. Does the uncle still have an insurable interest in the life of Peters?*

The insurable interest in life insurance must exist at the *time of the issuance* of the policy. *It need not exist at the time of the death of the insured.* Hence, in problem 3, the repayment of the loan by Peters will have no effect on the policy held by his uncle. If the latter continues paying the premiums, he may collect the face of the policy upon the death of Peters.

IMPORTANT LEGAL PRINCIPLES

1. *Binders are valid temporary contracts of insurance and afford protection until a formal policy of insurance is written.*
2. *A contract of insurance on property is valid as soon as the insurance company or its authorized agent accepts the offer of the prospective insured.*
3. *A person has an insurable interest in life or property when loss of life or the destruction of the property in question will cause him a financial loss or injury.*
4. *An insurable interest in property must exist at the time of the loss; however, in life insurance, the insurable interest need exist only at the time the policy is issued.*

CASE-PROBLEMS

1. At 10:00 A.M. Kane went to the office of the Excelsior Fire Insurance Company and agreed orally with the proper officer of the company to purchase fire insurance on his house. During the afternoon and before the policy was written, the house was destroyed by fire. Kane immediately offered the company the premium. The payment for the loss was refused and Kane brings suit. Is the company liable?

2. Harris and Williamson were good friends. Harris, without any request from Williamson took out a policy of fire insurance on Williamson's summer home. Two weeks later, Williamson's summer home was damaged by fire. The insurance company refuses to pay Harris. What are the rights of the parties?

3. Benton applies for insurance on his own life naming his friend Gilk as beneficiary. The insurance company refuses to issue the policy, claiming that Gilk has no insurable interest. Is the company correct in its contention?

4. Daniels, as owner of an automobile, had it insured for \$1,000 property damage. Subsequently, Daniels sold the car but did not notify the company of the change of ownership. While in the hands of the new owner, the car was involved in a collision and severely damaged another automobile. Is the company liable for the loss?

5. Jones and Fell were partners in a business. Fell took out a \$5,000 policy on the life of Jones. Three years later the partnership was dissolved. Fell, nevertheless, continued to pay the premiums and at Jones' death requested payment of the policy. Should the insurance company pay Fell?

CHAPTER 14

PROPERTY INSURANCE

KINDS OF PROPERTY INSURANCE

Generally, insurance on property may be classified as: (1) fire, (2) marine, and (3) casualty insurance. The latter type includes many different types of coverages such as: bodily injury and property damage insurance in connection with the operation of automobiles; public liability insurance as a protection to owners of realty and to persons engaged in personal service enterprises such as barber shops and beauty parlors. It also includes protection for those rendering services relating to the practice of medicine or dentistry. Another form of casualty insurance covers loss of personal effects such as jewelry, watches, wedding gifts, and furs. Since fire insurance on real or personal property and casualty insurance in connection with the operation of automobiles are types of insurance with which the consumer is most familiar, this chapter and the succeeding one will deal with the legal rights and obligations of the parties in each of these contracts.

STANDARD FIRE INSURANCE CONTRACTS

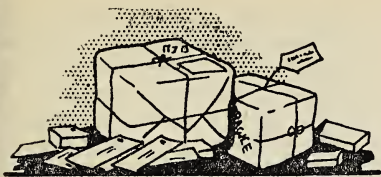
No matter which company a policyholder contracts with for fire insurance coverage, he is certain to obtain a standard fire insurance policy containing uniform clauses and provisions. Most states have adopted the New York Standard Fire Insurance Policy of 1943 or a standard instrument based on the



New York policy. A specimen or sample copy of this policy may be obtained from any fire insurance company or agent upon request. Some of the standard provisions of this policy of particular concern to the consumer are the following:

1. *Risks Covered*

- a. Direct loss by a hostile fire (a fire which passes beyond the limits ordinarily assigned to it, such as a fire in a stove, furnace, or lamp which escapes its ordinary bounds).
- b. Damage caused by cracking, scorching, and soot as a result of a hostile fire.
- c. Damage from water, chemicals, and breakage and other means used to extinguish a fire.
- d. Damage caused by smoke from an adjoining building which is on fire.
- e. Direct loss by lightning and by removal from premises endangered by the perils insured against in the policy.
- f. Fire loss following either an explosion or a riot.
- g. *Loss by theft* is not covered.
- h. Real or personal property is covered, but not bills, currency, deeds, money, or securities.
- i. The fact that the fire was caused



by the negligence of the insured is immaterial.

2. Removal of Insured Property

If the insured changes the location of the insured property without the consent of the company, the latter will not be liable for any loss occurring at the new location, even if the new location is less hazardous than the old one. However, should the property be removed for preservation from the perils insured against, the company will be liable pro rata for five days at each proper place to which the property has been removed.

3. Additional Insurance

Other insurance covering the same property is not expressly prohibited. However, the company may, by endorsement, prohibit other insurance or limit the amount in order to prevent over-insurance. If the insured takes out a policy of fire insurance covering the same property in each of three different companies, for example, each company will pay its proportionate share of the loss. Thus, if Lang insures his house against fire with each of three different companies: X Insurance Co., \$2,000; Y Insurance Co., \$3,000; Z Insurance Co., \$3,000, and then sustains a fire loss amounting to \$800, insurance companies will be liable as follows: X Co., \$200 (one-fourth

of \$800); Y Co., \$300 (three-eighths of \$800); Z Co., \$300 (three-eighths of \$800).

4. Vacant or Unoccupied

If the insured premises are left vacant or unoccupied for a period of sixty consecutive days without the consent of the company, the insurance is *suspended*. An endorsement is usually added to the policy giving the insured permission to leave the premises unoccupied without limit of time. It is important to read the policy to see if such an endorsement, in the form of a separate writing, is attached to the policy. If not, the agent should be notified to secure one before the insured leaves on an extended absence or vacation.

5. Increase of Hazard

If the hazard has been increased, permission therefor must be secured. Thus, if the insured decides to keep inflammable material on the premises, which undoubtedly increases the risk, the company must consent or the insurance is suspended.

6. Cancellation of the Policy

The standard policy provides: "This policy shall be cancelled at any time at the request of the insured in which case the company shall, upon demand and surrender of this policy refund the excess of paid premiums above the customary short rates for the expired time." A table of short rates is usually included in the fire insurance policy. The amount refunded to the insured is somewhat less than the amount refunded if the company cancels the policy.

Example: Shaw paid a three-year premium of \$12 on a fire insurance policy on his household furnishings. If the company canceled the policy at the end of the first year, Shaw would be entitled to receive two-thirds of the premium which he paid, namely \$8.00. However, if Shaw canceled the policy, the unearned premium refunded at the short rates (table included in the policy) would be somewhat less than \$8.00.

7. Assignment of Policy

The insured must not assign the policy *before a loss occurs* without the written consent of the company. This is because of the highly personal nature of the contract of insurance. The company is entitled to select the people with whom it chooses to deal.

8. Notice and Proof of Loss

In the event of loss or damage the insured must:

- a. Give immediate oral or written notice to the company. Written notice is safer.
- b. Protect the property from further damage.
- c. Prepare a complete inventory showing cost and amount of indemnity claimed for each article.
- d. Furnish, within sixty days after the fire, satisfactory proof of loss; otherwise, no recovery may be had. False and fraudulent claims are punishable by fine or imprisonment in most states.

9. Company's Settlement Options

A clause in the policy provides that it shall be optional with the company to take any or all of the in-

sured articles at an agreed or appraised value. It also gives the company the option to repair, rebuild, or replace the property, but this option is rarely exercised by the company. It usually finds it more convenient to pay cash.

10. Concealment, Fraud

If, whether before or after a loss, the insured has wilfully concealed or misrepresented any material fact or circumstances concerning the insurance, or in case of any fraud or false swearing by the insured, the policy is void. Example: Paul, when he applied for fire insurance, was asked to list all the buildings near his own. He intentionally concealed the existence of a small garage used for the storage of gasoline. A fire originating in this garage damaged Paul's property. The company would be within its rights in refusing payment for the damage incurred by Paul, inasmuch as he intentionally concealed a material fact from the company.

AUTOMOBILE INSURANCE

Among the dangers inherent in the operation of a motor vehicle is that of incurring serious financial loss. A car may be stolen, destroyed by fire, or damaged in an accident. It may be driven in such a manner as to cause bodily injury and property damage to others. If the owner of the car has neglected to protect himself by purchasing adequate insurance, he may see his lifetime savings wiped out to satisfy a court judgment or a claim. More than half of the states and most of

the Canadian provinces have so-called "financial responsibility laws" which provide in the event of an accident or conviction for a traffic violation, that the car owner submit evidence of financial responsibility. Such evidence may be in the form of collateral, money, or securities. These laws usually apply to non-residents as well as to residents. Failure to submit proof of financial responsibility results in suspension of the owner's operator license and registration plates. In 1946 Massachusetts was the only state which had a compulsory automobile personal liability insurance law.

TYPES OF AUTOMOBILE POLICIES

Bodily Injury Insurance

1. *Simpson took out a bodily injury policy of automobile insurance with "5/10 limits." Shortly thereafter, while driving his car, Simpson accidentally struck and injured Helen Jones. In a suit by the latter, a jury awarded her a verdict of \$7,500. What is the liability of the insurance company?*

The most important form of automobile insurance available to car owners is bodily injury insurance which covers liability for injury or death to one or more persons. The usual coverage for bodily injury is \$5,000 for death or injury to one person, with a \$10,000 aggregate limit of damages for death or injury to all persons to whom the owner may become liable in a single accident. This plan is customarily referred to as bodily injury insurance with 5/10 limits. Greater coverage



costs very little more when compared with the increased protection obtained; e.g., 10/20 limits costs 15 per cent more than 5/10, 15/30 costs only 21 per cent more than 5/10.

Usually the bodily injury insurance policy protects the insured while another person or member of the insured's family is driving the car with his express or implied consent. It does not provide protection, however, when the car is operated by a person under a specified age. In the above problem, since Simpson carried only 5/10 limits and only one person was injured as a result of the accident, the insurance company is liable for only \$5,000. Simpson will be obliged to pay the remaining \$2,500 out of his own funds.

Property Damage Insurance

2. *Barker carried an automobile insurance policy with coverage for bodily injury and property damage insurance. Barker was involved in an accident and damaged Resnick's car to the extent of \$150. What is the liability of the insurance company?*

In addition to the risk of bodily injury to other persons, the car owner runs the risk of liability for accidental damage to or destruction of property belonging to others. Property damage insurance covers the insured for liability imposed

upon him by law for *damages to the property of others* caused by accident and arising out of the ownership, maintenance, or use of a car. *It does not cover the property which the policyholder owns, rents, is in charge of, or transports.* The policy usually provides that upon the occurrence of an accident written notice must be given to the company or any of its authorized agents as soon as practicable. Such notice must contain particulars sufficient to identify the insured and also obtainable information respecting the time, place, and circumstances of the accident, the names and addresses of the injured persons and of available witnesses. Furthermore, the policy, generally, contains a provision that the insurer is not liable while the automobile is operated by any person under the minimum age required to obtain a license to operate a private passenger automobile or by any person under the age of fourteen years. The insurance protection under this and the bodily injury policy is usually made to comply with the provisions of the motor vehicle financial responsibility laws of any state, or in Canada of any province, and applies to any accidents sustained while the car is being driven in any state, Canada, etc. In the above problem, Barker's property damage policy protected him in case of damage to another person's car. The insurance company is liable for the damage to Resnick's car up to \$150.

Automobile Physical Damage Insurance

3. *Jenkins took out a policy of auto-*

mobile physical damage insurance containing a comprehensive clause covering loss or damage to his car due to fire, lightning, transportation, theft, and collision. Would Jenkins have a valid claim against the insurance company in each of the following cases?

- a. *Jenkins' car collided with one operated by Barker because of the former's failure to signal for a sudden stop. Jenkins' car was damaged.*
- b. *Several packages were stolen from Jenkins' car while it was parked in front of his place of business.*
- c. *Jenkins, without notifying the company, changed the location of his car from his own private garages to one publicly operated. This was intended as a permanent change of garages.*

An automobile physical damage policy generally provides for standard comprehensive coverage which may include loss or damage due to fire, lightning, transportation, theft, collision, or hazards such as windstorm, flood, glass breakage, robbery, and pilferage. The collision coverage obligates the company to reimburse the insured for damages caused to *his own car* by collision with another car or object or by upset. Collision coverage is usually obtained on a deductible basis. For example, under the \$50 deductible clause the company is liable only for the amount of damage to the car in excess of \$50. The deductible amount is subtracted from each loss. The policy provides for a statement by the insured as to the location or place where the car is to be kept.

This statement is construed as a warranty and must be strictly complied with. If the insured changes the location of his car without the consent of the company the policy may be rendered void.

Unless the policy contains a provision to the contrary, the insurer is liable for damage to the insured's car incurred while the insured may be guilty of violating the law, such as exceeding the speed limit. The maximum liability of the insurer, in any case, is the cash value of the car before its loss or damage. The theft coverage does not include packages left in the car. Neither does it include tools and repair equipment unless the entire car is stolen. The policy covers (without additional charge) loss of use in the event of theft. The insured is reimbursed for any sum actually expended, not exceeding \$5.00 per day, for the hiring or renting of another car. No pay-

ment is made for the first seventy-two hours after the theft has been reported to the company and to the police, nor in excess of \$150, nor for more than the actual cash value of the car, nor for any loss of use after the whereabouts of the automobile becomes known to the insured or to the company, nor after the company makes or tenders a settlement for such theft. Referring to the problems above mentioned, in (a), unless there is a provision in Jenkins' policy to the contrary, he may recover for the damage to his car in spite of the fact that the damage resulted from his violation of a traffic regulation. In (b), since theft coverage does not include the contents of the car, Jenkins cannot recover for the packages stolen. In (c), changing the permanent location of the car without the consent of the insurer constitutes a breach of warranty rendering the policy void.

IMPORTANT LEGAL PRINCIPLES

1. In fire insurance, the company is liable for losses resulting directly from a hostile fire.

2. If the insured changes the location of the insured property without the consent of the company, the latter will not be liable for any loss occurring at the new location, even if the new location is less hazardous than the old one.

3. If the insured leaves his premises vacant or unoccupied for a period of sixty days (consecutive days) without the consent of the insurer, the policy is suspended.

4. An increase of hazard without the permission of the company constitutes a breach of warranty and will void the policy.

5. The insured must not assign the policy before a loss occurs without the written consent of the company.

6. Wilful concealment or misrepresentation of a material fact voids the policy.

7. Property damage insurance in connection with the operation of automobiles protects the owner against liability imposed upon him by

law for damages to the property of others caused by accident and arising out of the ownership, maintenance, or use of a car.

8. Collision coverage obligates the company to reimburse the insured for damages caused to his own car by collision with another car or object or by upset.

9. Unless an automobile insurance policy provides to the contrary, the insurer is liable for damage to the insured's car or the car of another incurred while the insured may be violating traffic laws.

CASE-PROBLEMS

1. Nelson had his household furnishings insured against fire loss under a standard fire insurance policy. Fire destroyed an adjoining house and Nelson's furniture and draperies were badly damaged by smoke. Was Nelson entitled to recover from the insurance company for his loss?

2. Henning carried property damage insurance on his automobile in the sum of \$1,000. His car was badly damaged as a result of an accident. After notifying the insurance company Henning had the necessary repairs made and sent the mechanic's bill amounting to \$250 to the insurance company. Is the company liable?

3. Wilson took out a policy of automobile physical damage insurance with comprehensive coverage. One day while Wilson's car was in a parking station, some packages and blankets were stolen from it. Wilson reported the theft to the insurance company but the latter refused to pay him for the loss. What are the legal rights of the parties?

4. Mrs. Jones, a tenant in an apartment house, carried fire insurance on furnishings and family effects. A fire broke out in the apartment as a result of the negligent handling of a lighted cigarette and caused considerable damage to the furnishings. Is the insurance company liable?

5. Peters took out a standard fire policy on his household goods located in a house at 210 Annadale Road, Syracuse, New York. Two months later, without the knowledge or consent of the insurance company, he moved the goods to a house at 310 Pershing Boulevard, Syracuse, New York, which was a less hazardous location. A few months later, the house and all of the household goods at the new location were destroyed by fire. The insurance company refused to pay Peters for the loss and Peters brought an action at law against the company. Should he succeed?

6. Halliday insured his automobile against fire and theft with two different insurance companies. After Halliday's car was damaged by fire, he promptly filed a notice of loss with both companies. What is Halliday entitled to recover?

7. Simpkins insured his household and personal effects against loss by fire. While Simpkins and his family were away on an extended trip to Mexico, a fire broke out in his unoccupied house and caused considerable damage. The insurance company contends that the house

was unoccupied for more than sixty days and that under the standard fire policy, the company is not liable for any loss unless the insured obtains permission from the company or its authorized agent or unless the policy contains an endorsement permitting the premises to remain vacant or unoccupied for an indefinite period. Do you agree with the company's contention?

APPLICATIONS TO YOUR OWN CASE

1. Insurance policies and procedures are so highly standardized by law and company practices that there is scarcely ever need for knowledge of law in order to act against one's company. Rather, one needs to know the provisions in his own insurance policies for two reasons:

- a. So that, having analyzed his important risks, one can tell whether they are all covered by his insurance—and take appropriate action if they are not.
- b. So that he will not unknowingly cause any part of his insurance to lapse or be rendered void by his improper actions.

How would you find out exactly what coverage you or your family have? If you do not feel sure that you are interpreting the printed contract correctly, to whom should you go for advice?

2. Oral agreements with the agent, not shown in the policy or in riders attached to it, have no force. How should this affect your buying?

3. Reread the requirements of a policy as to your proper actions after a fire or other loss. How do you interpret the statement that you must protect the property?

4. In actual practice, reporting a loss and rendering a proof-of-loss statement is less difficult than the policy makes it sound. Why? Whom should you notify? Who will help you analyze the loss?

5. Insurance companies recommend that, whether or not you are insured, you do little talking after an automobile accident, but note statements of others, jot down details as to the accident, and get the names and addresses of the other parties and of witnesses. Why is this wise, even if you feel that you may be at fault?

6. Insurance companies which sell through an agent to you must be licensed and supervised in your state. Companies that sell by mail need not be, and as yet there is no federal regulating body. What does this indicate about the wisdom of buying insurance by mail?

7. If you should ever be dubious about the fairness of an insurance company's dealings with you, to what agency should you turn?

8. What is a good place in which to keep your property insurance policies?

9. Do you know of actual cases in which persons met trouble because they did not buy insurance properly or because they did not comply with its terms? What actions on their part would have helped?

CHAPTER 15

LIFE INSURANCE

LIFE AND PROPERTY INSURANCE COMPARED

The life insurance contract differs from that of property insurance in several important respects: (1) A contract of property insurance is one of indemnity—the amount paid to the insured is measured by the loss actually incurred; while in life insurance the sum to be paid to the beneficiary or to the insured is fixed by the contract—usually the face of the policy. (2) The property insurance contract may be evidenced by a temporary form or a binder and is effective as soon as the risk is accepted by the company or its duly authorized agent; whereas the life insurance contract is issued by an insurance company and usually does not take effect until the first premium is paid and the policy delivered. (3) A contract of property insurance may be transferred or assigned by the insured only with the consent of the company, while in life insurance the insured is free to assign his policy at any time if the policy contains a provision for changing the beneficiary. (4) A property insurance contract may be canceled by either party at any time before a loss occurs, whereas in life insurance only the insured may cancel under certain conditions. (5) As previously indicated, in property insurance the insurable interest must exist at the time of the loss; in life insurance it need exist only at the inception of the contract. (6) In

property insurance, the risk insured against may never occur; whereas, in life insurance, if the policy is continued, it must some day be paid as a claim.

KINDS OF LIFE INSURANCE

Insurance companies sell life insurance in three forms, namely, *Ordinary*, *Industrial*, and *Group*. In three states, savings banks are empowered to sell life insurance to residents of the state in amounts ranging from \$250 to \$3,000 (\$25,000 in one state) for each policyholder. Life insurance policies are also issued by fraternal orders, co-operative life insurance societies, and by the U. S. Government to those in the armed forces. The table opposite shows the major kinds of insurance and how they differ from one another.

TYPES OF LIFE INSURANCE POLICIES

The four most common types of life insurance policies may be classified as follows:

1. *Ordinary Whole Life*: Provides for the payment of a certain sum (the face amount) by the insurance company, on the death of the policyholder. The premium rate depends on the age of the insured at the time he buys the policy and premiums are payable as long as the insured lives. The premium does not increase as the insured grows older.
2. *Limited Payment Whole Life*: Premiums are paid by the policyholder for a limited period of years, usually 20

	AMOUNT	PREMIUM PAYMENTS	HOW PAID	PHYSICAL EXAMINATION
ORDINARY	\$1,000 and Over	Monthly Quarterly Semi-annually Yearly	Mail or in Person	Usually
INDUSTRIAL	Under \$1,000	Weekly or Monthly	Collected by Agent	Seldom
GROUP	One or Two Years' Earnings	Weekly Bi-weekly Monthly	Deducted from Pay	No
SAVINGS BANK	\$250 to \$25,000	Monthly Quarterly Semi-annually Yearly	Mail or in Person	Yes

or 30 years, or to a certain age, such as 60 or 65. When premium payments cease, the insured is said to have a paid-up policy and upon his death the full face amount of the insurance is paid to the beneficiary. Premium rates are higher than for ordinary whole life insurance.

3. *Endowment*: Combines life insurance with a systematic method of savings. Insured pays premiums for a stated number of years. He is insured throughout the period and if he lives until the period ends, the entire sum is paid to him in cash, or its equivalent in income. If he dies before the endowment period ends, the face amount is paid to the beneficiary named in the policy.

4. *Term*: Policyholder is protected for a given period of years only, such as 5, 10, or 20 years. If he dies during the term period, the face amount of the policy is paid to his beneficiary. If he survives to the end of the specified period, the policy expires. However, many term policies contain con-

version and/or renewal privileges. The conversion privilege allows the insured to change to a life or endowment policy at the higher premium rate required for the new policy, but without further evidence of insurability. If the policy is renewable, it may be renewed for a similar term but at the higher premium rate required for the insured's attained age. Upon expiration of a term policy there are no further benefits. It provides temporary protection for temporary needs.

IMPORTANT PROVISIONS IN LIFE INSURANCE CONTRACTS

Every buyer of insurance should read his policy carefully and familiarize himself with its more important provisions. Failure to do this might lead to unnecessary loss either to the insured or to his beneficiaries. An insured person who is unable to keep up premium payments on his life or endowment policy will find

a number of options or choices in the policy which enable him to continue his insurance on a modified basis without further premium payments. In all states, standard policy provisions are prescribed for life insurance. The more important standard life policy provisions are:

1. Change of Beneficiary

Life insurance policies provide that the insured may name the beneficiary and either reserve the right to change the beneficiary at will or elect not to change it without written consent of the beneficiary.

2. Misstatement of Age by the Insured

If the insured has misstated his age, the policy is not considered void. The standard clause provides that if the age of the insured has been misrepresented or misstated, the amount payable under the policy shall be such as the premiums paid would have purchased at the correct age. Thus, if the insured represented himself to be thirty years of age when as a matter of fact he was thirty-five, the insurance company, upon discovering this fact, will issue a policy for the smaller amount which the premiums actually paid by the insured would have purchased for a person thirty-five years of age.

3. Incontestable Clause

All life insurance policies issued by the regular legal reserve companies contain a provision that after the expiration of a given period, usually one or two years, the company may not contest the

validity of the insurance contract even though the insured has knowingly made false representations to obtain it. Example: Reilly in filling out his application for life insurance stated in answer to the question: "Have you ever suffered from tuberculosis?" "No." As a matter of fact, Reilly had suffered from the disease but his case was arrested by treatment. Reilly's reply constituted a breach of warranty which ordinarily would entitle the company to avoid the policy because, had the facts been known, they would have affected the company's decision as to whether or not to issue the policy. However, if the company does not discover this fact until after two years have elapsed, the incontestable clause would prevent the company from contesting the validity of the policy.

4. Default in Payment of Premium

The insurer must give notice to the insured of the due date of the premium and the consequences of failure to pay such premium. Provisions are required for twenty-eight to thirty-one days of grace in the payment of the premium. Thus, if the insured makes the required payment any time during the period of grace, the policy remains in force.

5. Lapse and Reinstatement

If the insured fails to pay a premium within the grace period after it is due, the policy lapses. However, all policies contain a provision that the policyholder may, upon application within a reasonable time, have the policy reinstated if the policyholder is

still an insurable risk. If the policy is reinstated, the insured is required to pay all premiums in arrears with interest. All life and endowment policies provide that in case of a lapsed policy, the policyholder may take advantage of one of several *nonforfeiture* options: (1) receive the cash surrender value; (2) obtain reduced paid-up insurance; or (3) convert the policy to extended term insurance. However, these options are unavailable unless the policy has a cash value.

6. Cash Surrender and Loan Value

It is provided by statute that after a life or endowment insurance policy has been in force for a period of two or three years, the insured upon surrender of the policy shall be entitled to a certain sum of money, known as the *cash surrender value*. This sum is usually less than the total premiums paid in. This same amount, referred to as a *loan value*, may be borrowed by the insured upon request and at an interest rate stated in the policy, usually 5 per cent or 6 per cent. All states require the table of cash surrender and loan values to be incorporated into the policy.

7. Reduced Paid-up Insurance

If the insured fails to pay a premium when due and the policy has a cash value, he may elect to apply this cash value as a net single premium to purchase a reduced amount of paid-up insurance on the same plan of insurance as the original policy. The amount will be such as the single premium will buy at his attained age rate.

8. Extended Term Insurance

If the insured fails to pay a premium when due and the policy has a cash value, he may elect to apply this cash value as a net single premium to purchase extended term insurance in the same amount as the face value of the original policy (less any indebtedness). The extended term will be of such duration as the net single premium will buy at the insured's attained age rate.

The policy contract states which of the last two nonforfeiture values, paid-up insurance or extended term insurance, will automatically go into effect after nonpayment of a premium in the absence of any choice on the part of the insured.

IMPORTANT LEGAL PRINCIPLES

1. *If he has reserved the right to do so, the insured may change the beneficiary of his life insurance policy. If he has not so elected, then the beneficiary has a vested interest in the policy of which he cannot be deprived without his consent.*

2. *If the insured has misstated or misrepresented his age, the policy is not void. The company, upon discovering this fact, may issue a policy for an amount which the premiums actually paid by the insured would have purchased at the correct age. If the error is not dis-*

covered until the insured's death, then the correct amount will be paid as a death claim.

3. The insurance company must notify the policyholder of the due date of the premium and the consequences of failure to pay such premium. The insured has 28 to 31 days of grace in the payment of the premium due.

4. Life insurance policies usually contain a standard provision that after the lapse of a given period, usually 2 years, the company may not contest the validity of the insurance contract even though the insured has knowingly made false representations to obtain it.

5. In case a policy is lapsed with a cash value, the policyholder is allowed the options of receiving the cash surrender value, obtaining reduced paid-up insurance, or converting the policy to extended term insurance.

CASE-PROBLEMS

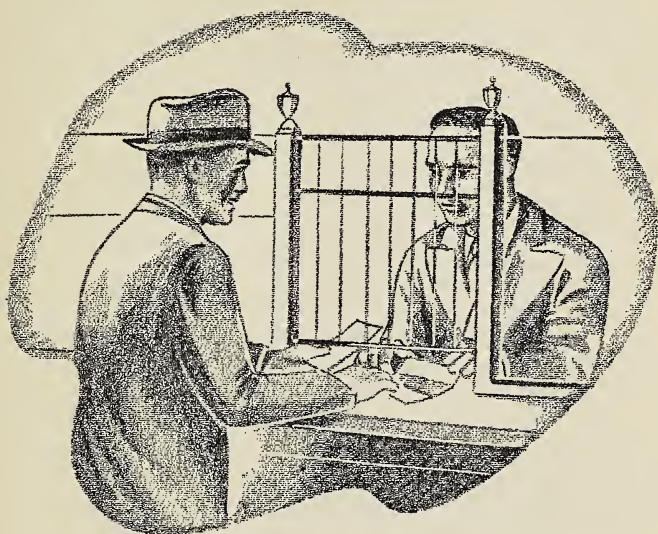
1. Terry stated in his application for life insurance which was made part of the policy that he was twenty-five years of age. In fact, he was thirty years of age. The insurance company discovers this fact. What are the rights of the parties?

2. Crane was insured by the Dependable Mutual Life Insurance Company under a twenty-year endowment policy. After paying for six years, Crane failed in business and needed funds with which to pay his creditors. He seeks to surrender his policy and to collect a sum of money from the insurance company. Is he entitled to do so? Could Crane borrow money on his policy? How much?

3. Allen carried a life insurance policy which contained a clause to the effect that after two years, the company could not contest the validity of the policy except for nonpayment of premiums. Upon his death, six months after the policy was issued, the company refused to pay the claim having discovered that Allen had knowingly made false representations to the company regarding his health. What are the legal rights of the parties?

4. After paying for a number of years, an insured person allowed his endowment policy to lapse by failing to make his regular premium payments. He asks your advice as to his rights under the policy. Advise him.

5. Heller took out a straight life policy on his own life, naming his father as beneficiary. According to the provisions of his policy, Heller reserved the right to change the beneficiary. Thereafter, he changed the beneficiary to his younger sister. Upon the death of Heller, both claim the insurance. Who is entitled to it?



PART VI
PAYING FOR GOODS AND SERVICES

CHAPTER 16

NATURE OF NEGOTIABLE INSTRUMENTS

BUYING ON CREDIT

Many American consumers rely on the familiar practice of buying from stores or dealers on a *credit* or *time basis*. It is reliably estimated that before our entry into the war, consumers owed in excess of 9 billion dollars for goods and services purchased on credit and for money borrowed to finance these purchases.

Since buying on credit involves a time element, written evidence of the buyer's contract with the seller is generally provided in the form of invoices, itemized monthly statements, and in credit or negotiable instruments such as promissory notes and checks. Inasmuch as checks and promissory notes are circulated freely from person to person in a

manner similar to money, their use is strictly regulated by law. The *Uniform Negotiable Instruments Law* which has been adopted in all states provides for a higher degree of uniformity in regulation than any other law. This statute defines the rights and obligations of the parties who make use of negotiable paper as instruments of credit.

KINDS OF NEGOTIABLE INSTRUMENTS

Negotiable instruments are written evidence of some contractual obligation and are usually transferred by indorsement. Although there are many types of negotiable instruments in existence, the most common forms used by consumers are the promissory note and the check.

# 300. ⁰⁰	Chicago, Illinnois, June 1, 1945
Sixty days	after date I promise to pay to
	the order of Benson Department Store
Three hundred	Dollars
Payable at	Central Trust Company, Chicago
Value received	
No. 10	Due July 31, 1945 John Doe

Payee

Maker

PROMISSORY NOTE

A *promissory* note is an unconditional written promise to pay a definite sum of money to the order of a designated person or bearer at a certain or determinable future time. In order to be negotiable, a note must meet every provision of this definition. A promissory note is usually issued by an individual borrowing money, but it is also frequently used in payment of goods and services purchased on credit. The party who issues the note and promises to pay the money is legally known as the *maker* while the party to whom payment is promised (the creditor) is known as the *payee*. A promissory note may be signed by one or more makers.

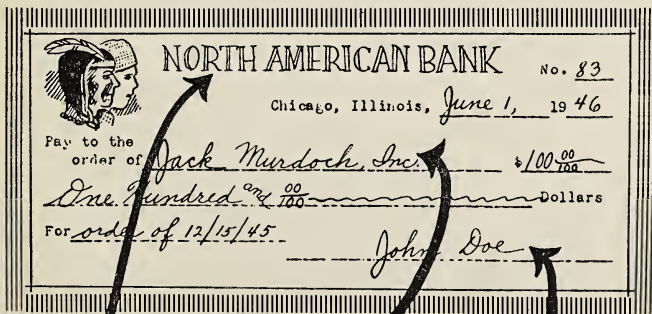
A *check* is a written order by a depositor on his bank, ordering the bank to pay on demand to bearer or to the order of a named person a certain sum of money. Three parties are generally involved in checks. The one who writes or draws the check is legally known as the *drawer*. The party to whom the check is

made payable is known as the *payee*, and the bank on which the check is drawn is known as the *drawee*. If a check or promissory note is transferred, the party who writes the indorsement, usually on the back of the instrument, is known as an *indorser*. The party to whom the instrument is transferred is known as an *indorsee* or *holder*. In the illustration on page 88, John Doe is the maker of the note while the Benson Department Store is the payee. In the one on this page, John Doe is the drawer of the check, Jack Murdock, Inc. the payee, and the North American Bank the drawee.

ESSENTIALS OF A NEGOTIABLE INSTRUMENT

According to the Uniform Negotiable Instrument Law, an *instrument* must conform to the following requirements in order to be negotiable:

1. It must be in writing and signed by the maker or drawer.
 - a. There is no liability unless the



Drawee

Payee

Drawer

CHECK

5. It must be payable on demand or at a fixed or determinable future date.
 - a. An instrument made payable upon the death of the maker or drawer is payable at a fixed or determinable future date since death is an event which is certain to take place although the exact time is unknown.
 - b. If the date of maturity of a negotiable instrument falls on a Sunday or a holiday, it is payable on the next succeeding business day.
 - c. A negotiable instrument payable on demand may be presented for payment up to twelve o'clock noon on Saturday.
 - d. When the time is expressed in days, the actual days are counted. When the time is expressed in months, calendar months are intended. Example: A note dated January 13, payable one month after date is due on February 28. A similar note payable 30 days after date would not be due until March 2, except in a leap year when the date of maturity would be March 1.
6. It must be delivered to the payee.
 - a. A check or note is inoperative as a contract unless it is delivered to the payee by the maker or drawer. Delivery usually includes a physical transfer of the instrument with intent to transfer ownership.
 - b. Delivery of an incomplete instrument impliedly authorizes the payee to fill in the blanks. If the payee exceeds his authority and fills in the wrong amount he cannot collect from the maker. However, a third party who takes the instrument in good faith from the payee may collect from the maker. One should not issue incomplete negotiable instruments nor carry any on his person.

NONESSENTIALS OF NEGOTIABLE INSTRUMENTS

The Uniform Negotiable Instruments Law does not prescribe a specific form for negotiable paper. An instrument may appear in any form provided that the essentials previously enumerated are included. The statute specifies that the negotiable character of an instrument is not af-

No. <u>324</u>	<u>New York, N.Y., June 10, 1946</u>
<u>Ninety days</u>	after date, I promise to pay to
the order of: <u>William Jameson</u>	\$ <u>350</u> ⁰⁰ / ₁₀₀
<u>Three Hundred Fifty and 00/100</u> Dollars	
Payable at <u>Corn Exchange Trust Co.</u>	
Value received with interest at 4%	
Due <u>September 8, 1946</u>	<u>Richard Baron</u>

Which items above are not legally essential?

fectured if (1) it does not contain a date—the date of issue may be lawfully inserted by the payee or holder; (2) it does not specify the value given (consideration)—the words “value received” may be omitted inasmuch as consideration in negotiable instruments is presumed; (3) it does not specify place where it is drawn or the place where it is payable.

However, through custom and usage, the form illustrated on page 88 has come to be generally accepted. Practically speaking, a negotiable instrument which does not contain a date will not be accepted by banks or merchants regardless of the provisions of the Negotiable Instruments Law. The date, in most instances, determines when the instrument is to be paid, and unless it has a date its value as a circulating medium is impaired.

TRANSFER OF NEGOTIABLE INSTRUMENTS

1. *Patrick Kennedy received his weekly salary check in the sum of \$60. On his way home, Kennedy stopped at his local drugstore to cash the check. The druggist examined the check and asked Kennedy to indorse it on the back. Kennedy wrote, “Patrick Kennedy,” and handed the check to the druggist who gave him \$60. What kind of indorsement did Kennedy use? What is the legal effect of such an indorsement?*

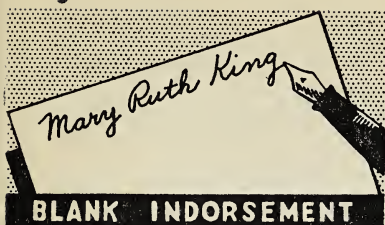
When the payee transfers a negotiable instrument to a third party in such a manner as to constitute the third party the legal holder, the instrument is said to have been *negotiated*. Negotiation may be effected



in two ways: (1) by mere *delivery* of the instrument if it is payable to bearer, such as checks payable to “Cash” or to “Bearer”; (2) by *indorsement and delivery*, if payable to the order of a definite person. When a person indorses an instrument with the intent to transfer the title, he also pledges his credit for its payment. An indorsement is a separate contract between the indorser and the person to whom the instrument is indorsed. The Uniform Negotiable Instruments Law provides for several different kinds of indorsements, but the average individual usually employs (1) blank indorsement, (2) special or full indorsement, (3) restrictive indorsement.

Blank Indorsement

An indorsement which merely consists of the name of the payee or holder and which does not mention the name of the person in whose favor it is made is known as a *blank indorsement*. In effect, the indorser is saying, “You may pay to anyone who is a bona fide holder of this instrument.” In other words, the instrument is payable to bearer and the holder may obtain payment or

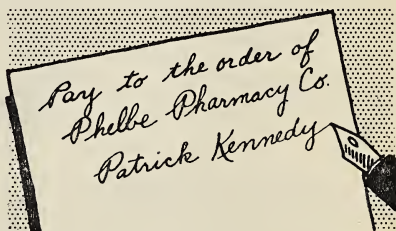


negotiate it to another person without any further indorsement. If the name of the payee is incorrectly spelled on the face of the instrument, he must first indorse it as drawn followed by an indorsement containing his name spelled correctly. In the above problem, Kennedy endorsed his salary check in blank and the druggist could legally negotiate it further by merely delivering the check to another party. For practical purposes, this type of indorsement may be safely used only where a check is cashed immediately. A blank indorsement should never be used when sending a negotiable instrument by mail—theft of the instrument may result in its negotiation to an innocent holder who would be entitled to collect from the maker or the payee. A useful provision in the law permits a holder of an instrument indorsed in blank to write above the blank indorsement the words, "Pay to the order of (holder's name)" thus converting the blank indorsement into a special or full indorsement.

Special or Full Indorsement

2. Assume in problem 1, that Patrick Kennedy indorsed his salary check as shown in the next column. What is the legal effect of this special indorsement?

A *special* or *full indorsement* specifies the person to whom, or to whose order, the instrument is payable. The instrument can be negotiated thereafter only by the indorsement of such person. It is the safest and most widely used indorsement when negotiable instruments are sent through the mail. Since Patrick Kennedy used a special or full indorsement, the check cannot be further negotiated without the indorsement of the Phelbe Pharmacy Co.



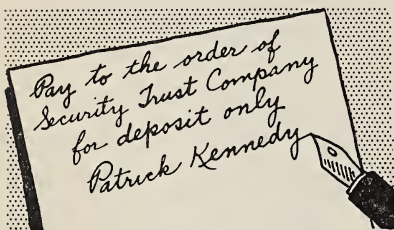
Restrictive Indorsement

3. Assume in problem 1 that Patrick Kennedy had a checking account at the Security Trust Company and that he regularly mailed his salary check to the bank for deposit. He indorsed the check as shown on the following page.

What is the legal effect of this indorsement?

An indorsement which does not transfer the ownership of the instrument but merely appoints the holder or indorsee as agent of the indorser for the purpose of collecting the money, is a *restrictive indorsement*. The legal effect of such an indorsement is, usually, to restrict the further negotiation of the

instrument. A promissory note may be restrictively indorsed, "For collection only." A check may also be indorsed simply, "For deposit only" without naming the bank for deposit. By using a restrictive indorsement, Patrick Kennedy has authorized his bank—the Security Trust Company—to collect payment for him and deposit the money to his credit.



ACCOMMODATION ENDORSER

1. Wilkins applied at his bank for a short-term loan. He was informed that the loan would be granted if he

gave the bank a 60-day promissory note with interest at 6 per cent, indorsed by a responsible person. Wilkins secured the indorsement of his friend Jenkins and delivered the note to the bank. What is Jenkins' liability on this note?

An indorsement by one who is not otherwise a party to the instrument but who places his signature in blank, before the instrument is delivered to the payee, is an *accommodation indorsement*. It is given for the purpose of lending credit without consideration. The accommodation indorser is not liable to the party accommodated but to the payee and any subsequent holders. One should never indorse a note for accommodation unless he is ready to pay the obligation if the maker fails to do so. In the above problem, if Wilkins should fail to pay the loan, Jenkins would be fully liable to the bank.

IMPORTANT LEGAL PRINCIPLES

1. To be negotiable an instrument must (1) be in writing and signed by the maker or drawer, (2) contain an unconditional promise or order, (3) be for the payment of money only, (4) be payable to order or to bearer, (5) be payable on demand or at a fixed or determinable future date, and (6) be delivered to the payee.

2. The Uniform Negotiable Instruments Law specifies that the negotiable character of an instrument is not affected if (1) it does not contain a date, (2) it does not specify the value given (consideration), (3) it does not specify the place where it is drawn or the place where it is payable.

3. Negotiation may be effected by (1) mere delivery of the instrument if it is payable to bearer, and (2) indorsement and delivery, if the instrument is payable to the order of a definite person.

4. A blank indorsement consists of the name of the payee or holder and does not mention the name of the person in whose favor it is made.

5. A negotiable instrument containing a special or full indorsement must be further indorsed in order to be negotiated.

6. A restrictive indorsement usually terminates the negotiable character of the instrument.

7. An accommodation indorser is never liable to the party accommodated but to the payee and to any subsequent holders.

CASE-PROBLEMS

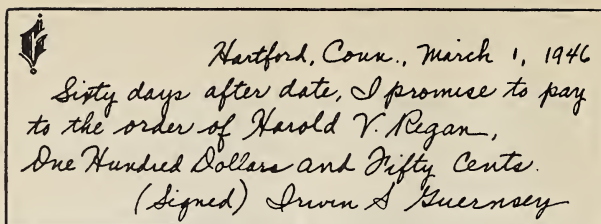
1. A promissory note reads: "Thirty days after date, I promise to pay to Anton Karl, \$400. Edward C. Becker." Is this instrument a valid negotiable instrument?

2. "Thirty days after my twenty-first birthday, I promise to pay to the order of Henry Hall, \$90 with interest at 4 per cent. G. Marlowe." Is this instrument negotiable?

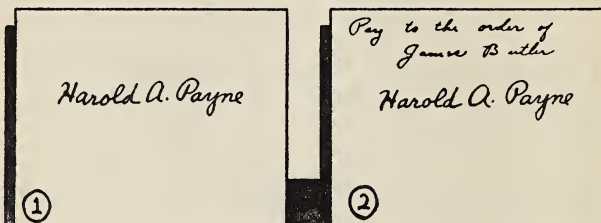
3. The maker of a promissory note payable to the Equity State Bank failed to pay it at maturity. The bank seeks to hold Melton, an accommodation indorser, liable for payment. Melton claims that he is not liable since he had received no consideration for his indorsement. Discuss the legal rights of the parties.

4.
 - a. List five essentials of negotiability illustrated by the promissory note on page 88.
 - b. List four nonessentials of negotiability illustrated by the promissory note on page 91.
5. How may the following instruments be negotiated?

1-30	MERCHANTS BANK 29 Broadway New York, N.Y.	1-30
New York, <u>June 19, 1946</u>		
Pay to the order of	<u>Cash</u>	<u>\$50.00</u>
	<u>Fifty and 00/100</u>	Dollars
No. <u>1572</u>	<u>David Drawer</u>	

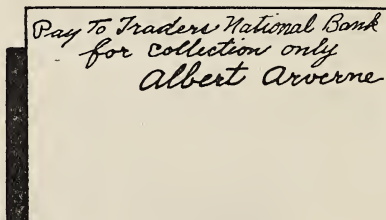


6. A check is negotiated by Harold A. Payne to James Butler indorsed as shown at the left below.



Butler changed the indorsement as shown at the right.

- What type of indorsement did Payne use?
 - What is the legal effect of such an indorsement?
 - Was Butler legally entitled to change Payne's indorsement?
 - What is the legal effect of the indorsement used by Butler?
 - Which of the two indorsements is the safer to use? Why?
7. A promissory note is indorsed in the following manner:



- What type of indorsement did Arverne use?
- What is the legal effect of this indorsement?

YOUR OWN PRACTICES

- From what you have learned about the legal aspects of negotiable papers, what rules do you want to lay down for your own han-

dling of these matters? Especially, what shall you do about indorsements of checks? accommodation indorsement of notes?

2. Do you know of any cases in which persons have suffered losses through carelessness or ignorance in the handling of negotiable papers? Precisely what was done wrong, and what was the effect?

3. If you know and have confidence in an indorser of a check, does it matter that you do not know the original maker? That is, can you collect from the indorser if the check turns out to be no good? If there are several indorsers, can you collect only from the last one, or from any?

4. As a corollary, if you accept a check and indorse it to someone else for payment, are you liable to him if the check is not honored?

5. How should you feel about asking a friend to make an accommodation indorsement of a note for you? How much liability are you asking him to accept? For what compensation? Is there any way in which you can protect him?

CHAPTER 17

CHECKS AND NOTES

ADVANTAGES OF A CHECKING ACCOUNT

1. *Harley bought an oil burner from Stimson for \$100. He gave Stimson his personal check for this sum which the latter deposited with his bank. Subsequently, Stimson claimed that he had not been paid for the oil burner. What evidence would Harley possess to disprove Stimson's statement?*

Depositors may avail themselves of two types of checking accounts: the general and the special. In a general checking account, the depositor usually contracts with his bank to maintain a minimum monthly balance which entitles him to make deposits and to draw a stipulated number of checks per month. As part of the agreement, the bank contracts to send periodic statements and canceled checks to the depositor free of charge. Usually, if the depositor fails to maintain the minimum balance required or draws an excessive number of checks during the month, a service charge is imposed by the bank. Under a special checking account agreement, the depositor does not have to maintain a minimum balance. He pays either five cents or ten cents for each check drawn and for each deposit which he makes. Some banks make no charge for deposit items. Most banks offering special checking account services impose a charge for furnishing the depositor with a monthly statement including the canceled checks.

Depositors benefit from the use of checks in the following ways: (1) Checks may be safely sent through the mails. (2) Checks minimize the necessity for handling cash except in small sums. (3) Canceled checks returned to the depositor periodically serve as receipts or evidence of payment. (4) The information recorded on the check stub may serve as a basis for preparing family budgets and personal income tax returns. In the above problem, Harley could easily disprove Stimson's statement by showing the canceled check containing Stimson's indorsement on the back.

RIGHTS OF THE DRAWER OF A CHECK

The contractual relation which exists between a bank and a depositor is that of debtor and creditor. This relation gives rise to certain rights and obligations on the part of both parties. Consumer-depositors who are authorized to draw checks on a bank in payment of goods and services would do well to note the following:

1. A drawer may hold his bank liable for paying an altered or raised check.

Sweeney issues a check to Haley in the sum of \$10. The latter raises or alters the amount of the check to read \$100. The bank will be liable to Sweeney if it pays out \$100 inasmuch as it failed to pay in accordance with Sweeney's order. However, if a check or other

negotiable instrument is altered and subsequently transferred to an innocent holder for value, the latter may collect the *original amount* of the instrument.

2. A drawer may hold his bank liable for payment of a check to which his signature has been forged.

Martin forges Johnson's signature to a check drawn on the Third National Bank. He cashes the check at the bank, the cashier having failed to notice the forgery. According to the Negotiable Instruments Law, the bank would be absolutely liable to Johnson. A bank is justified in paying out its depositor's money only on his genuine order. When a bank pays a check it warrants the genuineness of the drawer's signature.

3. A drawer may hold his bank liable for refusing to honor his checks.

Toll was the payee of a check drawn on the Second National Bank. When he attempted to cash it, the bank wrongfully refused payment. Although Toll—a stranger to the bank—cannot compel payment on the check, the drawer would have a legal right to recover any damage suffered by him as a result of the injury to his credit and reputation. However, a bank would be perfectly justified in refusing to honor a check when there are insufficient funds on deposit.

4. A drawer may hold his bank liable for failing to stop payment on a check after proper notification.

Mrs. Walsh purchased a kitchen

linoleum for \$10 from an itinerant peddler. The latter had warranted the linoleum to be a "genuine, inlaid linoleum." As a matter of fact, the linoleum actually consisted of a cardboard with a felt base. Mrs. Walsh, upon discovering that she had been defrauded, called her bank to stop payment on the \$10 check which she had given the peddler. The bank must honor her request and would be liable if it failed to stop payment on the check. *However, if the peddler negotiated the check to an innocent third party, the latter could collect regardless of the stop-payment order.*

5. A drawer has the right to have his checks certified by his bank.

Arlen decides to purchase a house for \$8,500. Before the deed to the house is delivered to him, he is requested to give the seller a down payment of \$850 in the form of a certified check. Arlen may go to his bank and ask that his check be stamped, "Certified"—which means that the bank guarantees that this sum of money will be deducted at once from Arlen's account and will be available to pay the check. If the certifying bank fails and the check is not paid, Arlen is still liable on it. However, where the payee or holder of a check obtains a certification from the drawer's bank, the drawer and any indorsers are discharged from liability—only the bank would be liable for payment of the certified check.

OBLIGATIONS OF A DRAWER OF A CHECK

1. A drawer or depositor must

maintain a sufficient sum on deposit to meet all checks.

Allison issues a check in the sum of \$200 on the Merchants National Bank. Allison did not have an account in the bank. In most states, statutes are in existence making it a crime for a person to issue, or a holder to negotiate a check knowing that in the bank on which it is drawn he has no funds or insufficient funds on deposit to meet the check.

2. A drawer must pay checks when his bank fails to do so.

According to the Negotiable Instruments Law, a check must be presented for payment within a reasonable time after its issue—usually not later than the next succeeding day after it is received if the holder of the check resides in the same locality where the check is payable. If the payee or holder fails to present the check for payment within a reasonable time and the drawee bank fails, the drawer and any indorsers will be discharged from liability to the *extent of the loss caused by the delay*. Thus, if the drawer's bank pays a liquidating dividend of 50 per cent to the drawer, the payee or holder would be entitled to collect 50 per cent of the check which he holds. At the present time, depositors of \$5,000 or less in any bank belonging to the Federal Deposit Insurance Corporation are protected against loss due to bank failure under the provisions of the act creating Federal Deposit Insurance Corporation.

3. A drawer must examine his canceled checks periodically and re-

port to his bank any alterations or forgeries.

Channing received his monthly statement from the Western Bank. Upon checking the canceled checks against his check stubs, Channing discovered that a \$10 check had been raised to \$100 and paid by the bank. According to the provisions of the Negotiable Instruments Law, Channing must notify the Western Bank of such alteration within *one year* after the canceled vouchers have been returned to him. Otherwise the bank is not liable for the \$90 overpayment.

BORROWING MONEY

Consumers make use of promissory notes in various ways. Those who resort to instalment buying usually sign a series of promissory notes payable at stated intervals with interest. More frequently, when there is a sudden need for cash and savings are inadequate or nonexistent, consumers who are compelled to borrow money sign promissory notes as evidence of their indebtedness. The various consumer lending agencies and the volume of business transacted by each are discussed in Unit 9 of this series. Clearly, the bulk of legitimate lending is performed by state licensed and regulated lenders, such as the small loan companies (personal finance companies), the personal loan departments of commercial banks, the industrial banks (of which the Morris Plan Banks are the best known), and credit unions. However, it is estimated that over one hundred million dollars in illegal lending was consummated by *loan sharks* in 1944 at interest rates

ranging from 120 per cent to more than 240 per cent a year!

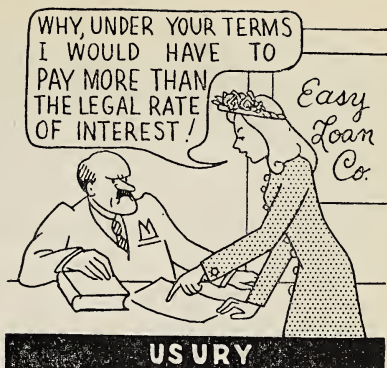
Illegal Lending

1. Stanton borrowed \$200 from Bitler, giving the latter a promissory note payable on demand with interest at 10 per cent per month. Later, Stanton refused to pay the loan or the interest, claiming that the rate of interest was excessive and illegal. What are the rights of the parties?

Most states have a statutory maximum interest rate or charge which may be imposed by the lender on the borrower. This interest rate which varies in the different states from 6 per cent to 30 per cent is called the *contract rate of interest*. Any interest charge beyond the contract rate is known as *usury*. No individual or association is permitted to charge a rate of interest in excess of the contract rate in most states. Usury penalties range from forfeiture of interest, fine, and imprisonment to no penalty at all in several states.

However, because of the high costs involved in making small, personal loans, many states have passed special legislation permitting the operation of credit unions, licensed small loan companies, and certain other forms of lending agencies at rates considerably above the traditional contract rates.

In spite of penalties, the usury laws of the various states have proved ineffective in curbing the activities of illegal lenders. Much of the success of the loan sharks can be traced to lack of co-operation by borrowers with the proper law en-



forcement authorities. In the above problem, Bitler's charge of 10 per cent per month is usurious in nearly all states. In the state of New York, the penalty imposed on Bitler would be forfeiture of the \$200 and the interest thereon. Stanton should take action against Bitler by complaining to the local district attorney, the state's attorney general, or the state supervisor of banking.

Licensed Lending

2. Smith borrowed \$240 from the Equitable Finance Company of New York for a period of one year on the following terms: $2\frac{1}{2}$ per cent interest per month on the first \$100 and 2 per cent per month on the balance still due. The principal, \$240, was to be repaid in equal monthly payments of \$20 each. After paying for three months, Smith refused to make any further payments on the ground that he was being charged a usurious rate of interest. Is Smith's contention valid?

The general ineffectiveness of usury laws has led many states to enact *small loan statutes*, embodying the main features of the *Uniform*



Small Loan Act. As a result of these laws, licensed small loan or finance companies in more than thirty states lend money to consumers at rates varying from 24 per cent to 42 per cent a year on sums usually not exceeding \$300. These small loan companies are carefully supervised by state banking or supervisory departments, and borrowers with grievances may take their complaints there without charge. Since an annual charge of 24 per cent or 36 per cent interest is quite high, many states do not permit lenders to add on fees, fines, or other charges to the cost of borrowing money. In addition to the licensed small loan companies, many states regulate the lending by personal loan departments of commercial banks, credit unions, industrial banks, building and loan associations, and pawnbrokers.

Since Smith borrowed the money from a licensed small loan company whose interest charges are strictly regulated under the laws of the State of New York, he has no cause for complaint and must repay the loan with interest according to agreement.

SOME SIMPLE SUGGESTIONS

One who writes or accepts notes

and checks should note the following suggestions:

1. Never act as cosignor or indorser of a negotiable instrument unless you stand ready to pay the obligation if the party or parties primarily liable are unable or unwilling to pay.
2. When writing a check or promissory note, write the amount in figures close to the dollar sign and the amount in words close to the left edge of the instrument. Leave no space for others to fill in words or figures.
3. Make no changes on checks or notes. If you need to make a change, write a new instrument after destroying the old one. Banks and merchants will not accept negotiable instruments which show that changes have been made on them.
4. Your signature on a check or note establishes your liability on it. You cannot claim subsequently that you did not understand the provisions in the instrument.
5. Do not accept checks from strangers.
6. Always use the proper date. Postdated checks may not be paid until the date indicated on the instrument.
7. Verify your bank statement regularly by comparing deposits and canceled checks with entries in checkbook and notify your bank promptly in case you discover errors, alterations, or forgeries. Notice in writing is preferable to oral notice.

IMPORTANT LEGAL PRINCIPLES

1. A drawer may hold his bank liable for: (a) paying an altered or raised check, (b) paying a check to which the drawer's signature has been forged, (c) wrongfully refusing to honor his checks, and (d) failing to stop payment on a check after proper notification by the drawer.

2. Where a drawer has his check certified at the bank prior to delivering it to the payee, he and the bank remain liable for its payment. If the bank fails and payment is not made, the drawer is liable for payment.

3. If the payee or holder of a check obtains a certification from the drawer's bank, the drawer and any indorsers are discharged from liability—only the certifying bank would be liable for payment.

4. In most states, statutes are in existence making it a crime for a person to issue, or a holder to negotiate, a check knowing that in the bank on which it is drawn there are no funds or insufficient funds on deposit to meet the check.

5. If the payee or holder fails to present a check for payment within a reasonable time and the drawee bank fails, the drawer and any indorsers will be discharged from liability to the extent of the loss caused by the delay.

6. According to the provisions of the Negotiable Instruments Law, a drawer must notify his bank of any alteration or forgery within one year after the canceled vouchers have been returned to him.

7. In most states, an interest charge in excess of the legal contract rate is called usury.

8. Small loan companies and in some cases personal loan departments of commercial banks, credit unions, and building and loan associations, industrial banks, and pawnbrokers are state-licensed lending agencies authorized to charge a statutory rate of interest higher than the contract rate that can be charged by other lenders.

CASE-PROBLEMS

1. Allen issued a check for \$100 payable to Cullen. The latter raised the amount to \$190 and cashed the check at Allen's bank. Upon discovering the alteration, Allen promptly notified his bank. Is the bank liable? If so, for how much?

2. Martin forged Haskins' signature to a check drawn on the Farmers Trust Company and payable to "Cash." The bank cashed the check for Martin without detecting the forgery. Is the bank liable to Haskins?

3. Jayson deposits \$500 in the Midland Bank as a checking deposit. He then draws a check payable to the order of Brewer, for \$200. Brewer presents the check promptly at the bank for payment, but the bank wrongfully refuses to pay. What rights, if any, has Brewer (1) against the Midland Bank? (2) against Jayson? Has Jayson any rights against the bank? Why or why not?

4. Dressen issued a check for \$400 on his bank payable to Gemmill. Gemmill neglects to present the check for payment, and two months later while the check is still in his possession the bank fails, paying its depositors twenty-five cents on the dollar. What rights has Gemmill against Dessen? How much would Gemmill collect if Dessen's bank were insured by the Federal Deposit Insurance Corporation?

5. Allerton, a swindler, issued a check for \$125 drawn on the Continental Trust Company, and payable to the order of the Hotel Arlington. The hotel deposited the check in the ordinary course of business and several days later it was returned marked, "no funds on deposit." What steps should the manager of the hotel take to collect the money?

6. Reilly issued a check on the Union Bank for \$600 payable to the order of Shelton. The latter presented the check at the bank for certification and the teller stamped it "Certified" adding the date and his signature. Thereafter, it was discovered that Reilly did not have sufficient funds on deposit to meet the \$600 check. What are Shelton's rights against (1) the Union Bank? (2) Reilly?

7. Parker borrowed \$150 from his friend Callan. He gave Callan a promissory note payable in 60 days with interest at the rate of 3 per cent per year. At maturity, Parker refused to repay the loan, claiming that Callan was not a licensed lender and therefore was not authorized to make loans. What are the legal rights of the parties?

CHECKS AND NOTES IN EVERYDAY PRACTICE

1. Under what circumstances might you as a bank depositor find it useful to have one of your checks certified? How should you go about having it certified?

2. Under what circumstances might you prefer to receive a certified check rather than an ordinary check?

3. On a blank form, demonstrate the proper way to fill out a check. Show how to indorse it for safety under varying circumstances.

4. Suppose on Saturday noon you received a check with a blank indorsement which you could not deposit until Monday. How could you decrease your risk in carrying it?

5. If canceled checks serve as receipts, what should you do with them?

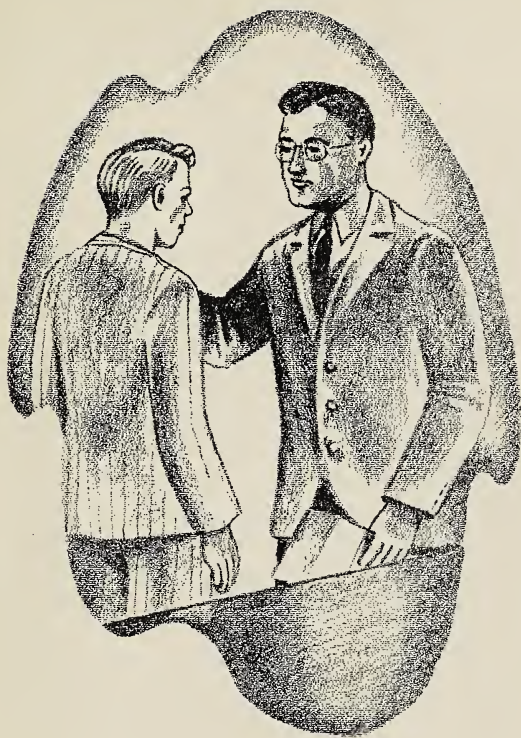
6. In your state, if you felt yourself being victimized by an illegal lender, what should you do? To whom should you turn for help?

7. Is a person an illegal lender simply because as a private individual without a license he lends money at interest?

8. If one must borrow, why is it wise to deal with licensed and supervised agencies only?

9. When you pay a note in full, what should become of the note?

10. In case of a dispute over whether a payment had been made, would the entry in your check stub be equally good evidence as a canceled check? Why or why not?



PART VII
PROTECTING THE CONSUMER

CHAPTER 18

CONSUMER PROTECTION BY LAW

THE CONSUMER-BUYER UNDER THE COMMON LAW AND THE UNIFORM SALES ACT

The common law gave the consumer-buyer very little protection against dishonest sellers. Early court decisions in effect said, "The buyer knows or ought to know as much about the nature and quality of the goods which he is buying as the seller. Since buyers and sellers bargain on equal terms, why shouldn't the buyer be self-reliant and take care of his own interests?" In other words, "Let the buyer beware" (*caveat emptor*).

It soon became apparent that the principle of "Let the buyer beware" favored the seller, who invariably knew more about his goods than did the buyer. As a result, buyers who felt uncertain about their purchases tried to protect their interests by obtaining express warranties from sellers. The courts also attempted to aid buyers by imposing obligations on the seller in the form of implied warranties (see Part III). However, they were careful to point out that the warranties protected the buyer only in case of hidden or latent defects in the goods which a reasonable inspection by him would fail to disclose. In short, "Let the buyer beware" was still a governing principle by which to judge transactions between sellers and buyers, and the subsequent adoption of the Uniform Sales Act merely affirmed this old and strongly established view.

Moreover, the remedies provided for an injured consumer-buyer under the common law and the Uniform Sales Act were practically beyond the reach of the average buyer of inexpensive articles as the discussion which follows will indicate.

Remedies for Breach of Warranty. Under the Uniform Sales Act, where there is a breach of warranty by the seller, the buyer has the election of the following remedies:

1. He can cancel the contract and refuse to receive the goods; or if he has already received them, he can return them to the seller and recover the purchase price.

Barnes purchases from Dineen for \$450 a rug which the latter expressly warrants to be a genuine Turkish rug. Later, Barnes discovers that the rug is only a cheap imitation. He offers to redeliver the rug to the seller and demands the return of his money. Barnes should be successful in recovering the full amount upon returning the rug.

2. Keep the goods and sue the seller for damages.

If Barnes, in the above problem, desires to keep the cheap imitation rug instead of returning it, he would be entitled to recover the difference between the actual value of the rug delivered to him and the cost of a genuine Turkish rug, in this case \$450. In other words, if the cheap imitation rug is worth only \$50, Barnes is entitled to recover \$400.

3. Keep the goods and claim a deduction from the purchase price.

If Dineen brings an action against

Barnes to recover the sum of \$450, Barnes could counterclaim against him, the damages which he (Barnes) suffered because of the breach of warranty. The counterclaim would have the effect of reducing the amount which Dineen may recover in this case to \$50.

From the standpoint of the consumer-buyer of inexpensive articles, these remedies are largely ineffective for the following reasons: (1) Suit cannot be brought against the seller until *after* the buyer has suffered damage—after the harm has been done. (2) The legal fees and court costs involved in an action for breach of warranty make this type of remedy too expensive for most consumer-buyers. (3) Technical rules of evidence frequently prevent a consumer-buyer from proving a just claim. (4) Failure by a consumer-buyer to notify the seller of a breach of warranty within a reasonable time after accepting the goods will bar his right to recover.

Remedies for Fraud. Under the common law, the consumer-buyer when he thinks he has been defrauded may elect to sue the seller for fraud instead of suing for breach of warranty. If the buyer elects to sue the seller for fraud, he may collect damages for breach of contract or he may cancel the contract and seek to be placed in the position he was in before the breach by the seller.

Whichever of these two actions the consumer-buyer elects, he usually encounters most of the obstacles previously mentioned in an action for

breach of warranty. In addition, the law imposes a severe burden of proof on the consumer-buyer who elects to sue for fraud. In order to succeed in an action for fraud, the buyer must be prepared to prove the following: (1) The seller made a *false representation or concealed a material fact*. (2) The seller *knew* that the representation was false or made it with reckless disregard of its truth or falsity. (3) The seller made the representation with the *intention* that the buyer act upon it. (4) The buyer *acted in reliance* upon the seller's representation and was *damaged*; i.e., suffered a money loss.

Each of these elements of fraud must be proved or the consumer-buyer will be unsuccessful with his suit. Proof of the fact that the seller *knew* that the representation was false is particularly difficult.

STATUTE LAW AND THE CONSUMER-BUYER

The inadequacies of the remedies under common law previously described have led federal, state, and local governments to assume the duty of protecting consumer-buyers. Within recent years a great many statutes have been passed for the purpose of protecting the lives, health, and property of consumer-buyers. By virtue of these statutes, various governmental agencies have been created charged with the responsibility of achieving this purpose. The most important of these governmental agencies are the following:¹

¹ Several of these agencies have been described in more detail in other units of this series. References to these other units are given.



FEDERAL AGENCIES FOR THE PROTECTION OF CONSUMERS

alties are high and results usually certain.

1. United States Post Office Department (See *Learning to Use Advertising*, pages 76-77.)
 - a. Aims to prevent use of the mails in carrying out fraudulent schemes such as lotteries and "get-rich-quick" plans.
 - b. Postal inspectors gather evidence and a *fraud order* may be issued by the Postal Department. The individual accused must appear and explain. Failure to do so satisfactorily will result in a cancellation of his privilege of receiving mail or cashing money orders.
 - c. Complaints must be made by consumers in most cases. Post Office Department will not attempt to recover money lost by complainants. Latter must bring a civil action for that purpose.
 - d. Postal Department may submit evidence to the U. S. Attorney General for criminal prosecution.
 - e. Small staff results in a slow and cumbersome procedure but pen-
2. Food and Drug Administration (Federal Security Agency) (See *Using Standards and Labels*, pages 32-49.)
 - a. Administers the *Federal Food, Drug and Cosmetic Act* of 1938. This Act substitutes for the *Federal Food and Drug Act* of 1906 which was repealed. Original act forbade: adulteration (making a product inferior by adding inferior substances), misbranding (false statements or omissions on packages, or selling under a false name).
 - b. Most important provisions of the 1938 Act are:
 1. Brings *cosmetics* (except soap) under the law and prohibits shipments in interstate commerce of those injurious, adulterated, or misbranded.
 2. Expands the term *drug* to include any device used for health purposes and prohibits the introduction of a new drug

into interstate commerce until an application has been approved by the Administration.

3. Eliminates the so-called "fraud joker"—requiring proof that the manufacturer *knew* his labels were false. (See discussion of fraud under the common law on page 107.)
 4. Requires package drugs to bear name and address of the manufacturer and to state the quantity.
 5. Requires a statement: "Warning—may be habit-forming" to appear on labels of certain drugs. The common name and active ingredients of such drugs must also be given.
 6. Requires all drug labels to give clear directions on use and clear warnings against misuse.
 7. Prohibits shipments of all food harmful to health.
 8. Requires food labels to contain a statement of artificial coloring and preservatives if any are used.
 9. Permits the Food and Drug Administration to set minimum standards for foods after holding public hearings.
 10. Imposes criminal penalties, big fines and prison terms.
3. Federal Trade Commission (See *Learning To Use Advertising*, pages 81-87.)
- a. Originally established to maintain fair competition among businessmen by preventing unfair trade practices which arise in the course of interstate commerce. But F.T.C. action also supplies some protection to consumers. For example, it can prosecute for:

1. Misbranding or mislabeling of goods as to quality. (See also *Wool Products Labeling Act* of 1939 below.)
2. False and misleading advertising. (See *Wheeler-Lea Amendment* of 1938 to the *Federal Trade Commission Act* below.)
3. Imitating popular or well-known trade-marks, trade names, labels, etc.
4. Selling rebuilt or second-hand goods as if they were new.
5. Deceiving consumers by resorting to selling tricks, such as offering fake discounts, wholesale prices to retail trade, using a misleading firm name to give impression of bigness, giving away free merchandise with a sale of another article above usual price, using a misleading product name, claiming fake scientific tests, etc.
- b. The Federal Trade Commission may act either on its own initiative, or on the basis of a complaint filed by a consumer or a competitor.

Wheeler-Lea Amendment to the Federal Trade Commission Act (1938)

- a. Prohibits false advertising of foods, drugs, devices, and cosmetics which are shipped through interstate commerce.
- b. Makes unlawful any advertisement which is false or misleading as to a *material fact*.
- c. Renders unnecessary proof to show that the advertiser *knew* the advertisement was false or misleading. (See discussion of fraud under the common law on page 107.)

d. Federal Trade Commission may employ the following procedure if it believes an advertisement is false or misleading:

1. Request advertiser to *stipulate* that he will discontinue publishing the advertisement.
2. Issue a *cease and desist* order after a hearing. This requires the advertiser to stop publishing the advertisement—violation of such an order may result in a fine up to \$5,000.
3. Obtain an injunction from a U. S. District Court compelling advertiser not to publish an advertisement if the public interest requires such action, as in the case of a dangerous drug.

e. Small Congressional appropriations to Federal Trade Commission hamper effective enforcement of this Act.

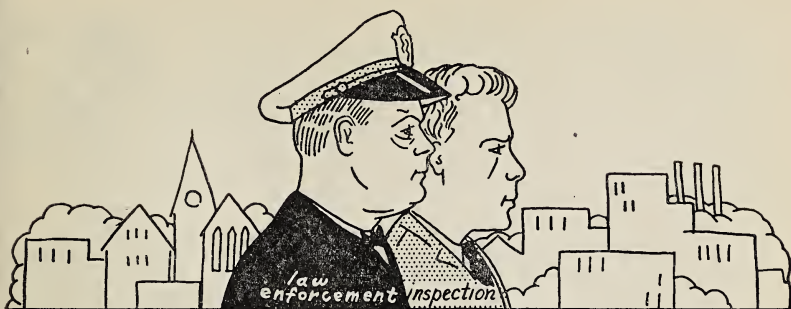
Wool Products Labeling Act of 1939

- a. Requires most products containing more than 5 per cent wool to be adequately labeled by specifying percentage of (1) new and virgin wool, (2) reprocessed wool, (3) reused wool.
- b. Label, stamp, or tag must contain name of the manufacturer or his Federal Trade Commission registration number.
- c. None of the provisions of this act apply to the manufacture or sale of carpets, rugs, mats, or upholsteries.
- d. Any person who wilfully violates this Act is guilty of a misdemeanor and upon conviction will be fined not more than \$5,000, or be imprisoned not more than one year, or both, in the discretion of the court. The Commission may certify a case to the

Attorney General of the United States for prosecution.

4. Securities and Exchange Commission (See *Learning To Use Advertising*, pages 87-89.)

- a. Enforces the provisions of the *Securities Act* of 1933, the *Securities Exchange Act* of 1934, and the *Public Utility Holding Company Act* of 1935. Securities Act of 1933 makes it illegal to use any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy a security unless such security is (1) registered with the S.E.C., and (2) unless a proper prospectus is used. A prospectus may be in the form of a circular, a notice, or letter, etc., offering a security for sale.
- b. S.E.C. may in the public interest require changes in the information contained in the prospectus.
- c. Securities Exchange Act of 1934 governs the sale of securities on exchanges and "over the counter" markets. No exchange is permitted to transact business unless it is registered or exempted from registration by the S.E.C.
- d. Has no jurisdiction over the following types of securities—government bonds, railroad, commercial and savings banks, and building and loan securities.
- e. Does not guarantee or approve issues; merely requires public disclosure of information as to the real value of securities offered for sale. Prospective investors may apply directly to S.E.C. for information regarding a registered security and may file complaints directly with the Commission.



STATE AND CITY LAWS PROTECTING THE CONSUMER

- f. Violations of the law are punishable by heavy fines, imprisonment, or both.
- 5. Federal Deposit Insurance Corporation
 - a. Created by an act of Congress in 1933 to provide government insurance of bank deposits up to \$5,000.
 - b. National banks must be members, while other banks are invited to join.
 - c. The insurance fund is made up by contributions by the U. S. Treasury, twelve Federal Reserve Banks, all member banks of the Federal Reserve System, etc.
 - d. Each bank must pay a premium of $\frac{1}{12}$ of 1 per cent of its deposits.
 - e. Prohibition of sale of diseased and infected fish.
 - f. Regulations concerning the canning of foods.
 - g. Control of the bacteriological count in swimming pools.
 - h. Regulation of the manufacture and restriction of the sale of certain types of second-hand goods (remaking of mattresses, fumigating of second-hand furniture).
 - i. Prevention of the use of sulphur containing arsenic in the spraying of fruits and vegetables.
 - j. Regulation of clinics, dispensaries, barber shops, etc.
 - k. Licensing of physicians and surgeons, pharmacists, nurses, dentists, dental hygienists, chiropractors, obstetricians, optometrists, osteopaths, etc.
 - l. Various sanitary codes, etc.

STATE AND CITY LAWS FOR THE PROTECTION OF CONSUMERS

1. Laws Which Protect the Consumer's Health

- a. Pure food and drug regulations.
- b. Regulations covering food-dispensing establishments (restaurants, meat markets).
- c. Meat and milk inspection.
- d. Regulations designed to protect watersheds and water supplies from contamination.

2. Laws Which Provide for the Safety of Consumers' Lives and Property

- a. Prohibition of the sale of certain drugs without prescription.
- b. Regulation of the sale of poisons.
- c. Restriction and regulation of building.
- d. Provision in theaters for proper fire and safety equipment.

- e. Requirement of underwriters' standards in the sale of electrical equipment.
- f. Regulation of weights and measures.
- g. Regulation of insurance companies, state banks, building and loan associations, personal finance companies, etc.
- h. Prohibition of frauds and the issuance of false financial statements.
- i. Blue-sky legislation; bucket-shop prohibition.
- j. Requirement for the bonding of warehouses.
- k. Requirement for proper labeling of commercial feeds, fertilizers, imported eggs, wines, and second-hand furniture.
- l. Laws relating to false advertising, etc.
- m. Supervision of banking and insurance.



PRIVATE AGENCIES PROTECTING THE CONSUMER

The American Medical Association makes laboratory tests of various foods and medicines and accepts products which meet pre-determined standards. Its reports are available to anyone. The National Board of Fire Underwriters maintains laboratories for the testing of materials and devices which may affect such hazards as fire, theft, accident, etc. (With reference to various private agencies, see *Using Standards and Labels*, Chapter 4.)

SMALL CLAIMS COURTS

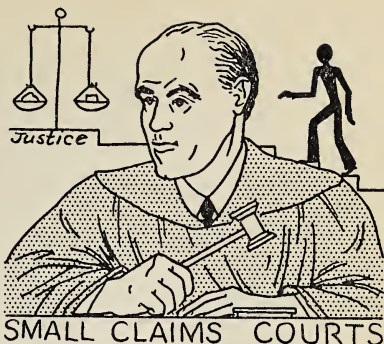
One of the most constructive measures to aid consumer-buyers has been the establishment in more than eighteen states of *small claims courts* to handle legal disputes involving sums of less than \$50. The purpose of these courts is to render justice without delay, with a minimum of legal formality, and at small cost to the injured party who brings suit. The small claims court is usually a divi-

PRIVATE AGENCIES PROTECTING CONSUMER-BUYERS

In addition to the governmental agencies organized for the protection of the consumer, many private agencies have voluntarily undertaken to render a similar service. The best known are: Better Business Bureaus, American Medical Association, and National Board of Fire Underwriters.

The Better Business Bureaus, organized in various cities, attempt to prevent unfair trade practices, warn the consumer against fraudulent schemes and devices, investigate soliciting "rackets," loan sharks, and campaign for better standards and practices in advertising and selling. (See *Learning To Use Advertising*, pages 63-66.)

sion of a court which is already in operation. In New York City, for example, the small claims court is a branch of the Municipal Court of the City of New York. The procedure is as simple as it is sensible. The plaintiff (person bringing the suit) appears in person and with the help of a court clerk fills out in duplicate a complaint against the defendant (person who is being sued). The original copy is filed with the court while the duplicate is served on the defendant. Attorneys may appear in the case but their presence is usually unnecessary. The trial is informal and questions of evidence are decided on a purely common-sense basis. If the defendant fails to appear in court in response to the sum-



mons served on him, judgment by default is entered against him. The plaintiff may then proceed to collect on the judgment in a manner similar to judgments rendered by other courts.

IMPORTANT LEGAL PRINCIPLES

1. Where the seller is guilty of a breach of warranty, the consumer-buyer may elect to: (1) return the goods and recover the purchase price, (2) keep the goods and sue the seller for damages, (3) keep the goods and claim a deduction from the purchase price.

2. A consumer-buyer who claims a breach of warranty must give notice of such breach to the seller within a reasonable time after accepting the article; otherwise his claim will be barred by law.

3. In order to succeed in an action for fraud, the buyer must prove the following statements: (1) The seller made a false representation or concealed a material fact. (2) The seller knew that the representation was false, or made it with reckless disregard of its truth or falsity. (3) The seller made the representation with the intention that the buyer act upon it. (4) The buyer acted in reliance upon the seller's representation and suffered a money loss.

4. A defrauded buyer may sue to collect damages for breach of contract or he may cancel the contract and seek to be placed in the position he was in before the breach by the seller.

5. In some cases a defrauded party may prosecute criminally—where the seller obtained money under false pretenses, misused the mails, or misbranded his merchandise, etc.

QUESTIONS AND CASE-PROBLEMS

1. Tilden sold to Arnold for \$200 a 9 x 12 rug which he warranted to be an "imported woolen rug." As a matter of fact, Arnold discovered that instead of wool, the rug was woven of jute, cotton, and hemp and was actually worth \$16. What legal remedies are available to Arnold?

2. A woman looks at a floor lamp displayed for sale by a department store for \$19.98. The salesperson who waited on her said, "Madam, this is the best buy in the entire city." After purchasing the lamp, she discovers that the same lamps are offered for sale by another store for only \$15.98. Has she any legal rights against the department store?

3. Which federal agency would have power to handle the following complaints from consumer-buyers?

- a. That a certain dealer was selling rebuilt refrigerators as new ones.
- b. That a manufacturer of drugs sold in interstate commerce did not specify on the labels that the drugs were habit-forming.
- c. That a certain individual was mailing circular letters to selected prospects offering to sell them information regarding a "get-rich-quick" scheme which was fraudulent.
- d. That worthless industrial securities were being sold by a certain corporation to unsuspecting investors.
- e. That a certain lotion or cream was being advertised as capable of making impossible improvement in personal appearance.

4. List at least six state and city laws which are designed to protect the consumer's health.

5. List at least six state and city laws which are designed to protect the lives and property of consumers.

6. Describe the activities of each of the following private agencies organized for the purpose of protecting the interests of both producers and consumers.

- a. Better Business Bureaus
 - b. American Medical Association
-

WHEN TROUBLE COMES

Throughout this unit we have stressed using your understanding of the law as a means of *avoiding* difficulties. We have hoped that you would not view the law primarily as a club to hold perpetually over someone's head.

But now and then even the most careful man may run into trouble, perhaps through his own mistakes, perhaps because someone is deliberately seeking to exploit him. Then it is time for vigorous, decisive action. If your just rights are being invaded or endangered, there is nothing sensible or admirable about taking it lying down.

That you take action when action is needed is important not only to your own interests but also to the interests of society as a whole. For nothing encourages the continuing depredations of crooks and shysters—especially petty ones—so much as that people so often let them get away with their thieving tricks. We have built up our elaborate machinery to preserve social discipline and to make equal justice open to all. It is the duty as well as the right of every citizen to use it when he needs it, for in civil cases remedial action depends on the initiative of the person who has been wronged. (In criminal cases, government prosecutors take action when they become aware that the law has been broken, but the government does not prosecute civil suits for us; hence they depend on our taking the initiative.)

GET EXPERT HELP

Don't try to worry through in your amateurish way; you may only aggravate an already bad situation. There are men and women whose life work is to handle just such problems as yours. Having their professional expertness at your command will give you a sense of reassurance—let you stop fruitlessly worrying—in addition to giving you a better chance to win what is justly yours.

Besides—and this is no small consideration—the mere fact that you go to the professional expert will solve some problems immediately. For if a loan shark, or some such person, has been victimizing you, the chances are he has been calculating that you will be too timid or too ignorant to take aggressive action. The minute you do, his whole conduct may change. He may have been running a bluff; he may be so badly outside the law that he cannot stand examination. If so, his hold on you will collapse as soon as you bring the case into the open.

The Lawyer. The professional expert in legal matters is the lawyer. Of course he should not be consulted only in time of trouble, or after the fat is already in the fire. A great deal of trouble could be avoided if competent attorneys were consulted *before* anything goes wrong—when contracts are being drawn, wills made, etc. But just as we think of our physician especially in times of illness,

so we tend to think of our lawyer especially in times of trouble.

Men of large affairs commonly have a family lawyer just as they have a family doctor. It would undoubtedly be a good thing if more families did so; the expense involved would probably be more than compensated.

There are three general types of situations in which you should be sure to consult an attorney:

1. When you are taking steps about the legal implications and outcomes of which you are in doubt. For instance, if you suspected someone of criminal action and felt it your duty to expose him, it would be wise to find out whether the action you planned would expose you to a charge of malicious slander or libel.
2. When you are taking steps that involve substantial sums of money, even if you are fairly sure you know how to proceed. For example, if you were buying a farm or a home, it would be cheap insurance to have the title checked by an attorney and let him give you other guidance in observing proper procedure and form.
3. Whenever, either as plaintiff or defendant, it is necessary for your interests to be represented in court.

Hiring an attorney's services is about the same as hiring the services of any other professional man. He may ask for an advance fee, referred to as a *retainer fee*, although if you are well known he may not do so. Sometimes attorneys are employed on a *contingent* basis. For instance, if you were struck by a car and wished to sue for damages, you might promise your attorney one third of whatever payments he succeeded in get-

ting for you. This sort of arrangement is fairly common in the collection of overdue accounts. Of course, it means that the attorney gets nothing if his efforts fail.

It is very important to select an efficient and trustworthy lawyer. In order to practice law he must be a member of the Bar Association, and flagrant violators of professional ethics are expelled from this. Nevertheless, among those who do belong there are great differences in ability and character. There are several published lists which offer some guidance, among them the *Martindale-Hubbell Law Directory*, published by Martindale-Hubbell, Inc., Summit, New Jersey, and the *Lawyers Directory*, published by The Lawyers Directory, Inc., 818 East Fourth Street, Cincinnati, Ohio. But for ordinary purposes you may find it more practical to be guided by the local reputation of available attorneys. Your bank or a trust company can probably help you with a recommendation.

OTHER SOURCES OF EXPERT HELP

Hiring a lawyer is not always the only way to get the help we need. In some kinds of cases a lower-cost method may be possible and entirely adequate. A few outstanding resources are sketched below.

The Better Business Bureau. In most large or middle-sized cities, leading businessmen have combined to organize and support a Better Business Bureau. One of its chief functions is to promote satisfactory, ethical dealings between sellers and consumer-buyers. The Bureau is con-

stantly on the alert to detect businessmen who habitually mistreat their customers, and to put a halt to their activities.

If you feel that you have been unfairly treated by a businessman, you can take your complaint to the Bureau (preferably the Bureau in the city where he operates) and your case will be carefully examined. If the Bureau finds that you are right, it will lend its influence toward getting you a fair settlement—and its influence is great. It will not prosecute a suit for you, although occasionally it does turn over evidence of unfair trade practice to some government agency.

Administrative Agencies. In certain kinds of cases government agencies are equipped to give you direct aid.

For example, one complaint that comes up often is that a laborer has not been paid for work done. In a number of states the labor commissioner (or official by some such title) is empowered to handle such cases without charge. He can investigate the matter and take direct action to collect the money. Of course, if your problem is related to payments under workmen's compensation laws, the labor commissioner is your agent.

Likewise, every state has a Department of Insurance. If, as a policyholder, you have some question or grievance, this office can give you advice, can take the matter up with your company, or perhaps even order remedial action if that becomes necessary.

Another frequent source of trouble

is the exploitation of small borrowers by illegal lenders. In states which have small loan laws, such credit matters are commonly supervised by the banking department. And in a number of cases the department is empowered by law to act for the victim.

Other examples could be found. The basic laws and administrative organizations will vary from state to state and even from city to city. You will need to learn the situation in your own community. But in almost any state some authorities can be found to help you on certain matters.

Legal Aid Organizations. A growing problem as the American people have crowded more and more into large cities has been that many who need expert legal advice and assistance have not been able to afford it. Lawyers have always handled some cases free or at very small cost, but in the poorer sections of large cities the load became too heavy to be borne by individuals. Furthermore, in criminal cases, counsel is generally provided by the state for accused persons who cannot afford to hire a lawyer; but this does not apply to poor persons who need to initiate an action of their own.

The result is a serious social problem. In this nation we are determined to provide equal justice under law *for all*. That is an inspiring ideal when we contrast it with the practice in many an old land, such as ancient Rome, where the first question in court had to be "To what class do you belong?"—and much of the result hinged on whether the man

was rich or poor. Justice, we insist, is a *matter of right*, not of grace. One's getting justice should not depend on his ability to pay fees and hire counsel; if it does, we no longer really have "equal justice."

One method of meeting this problem, which is most pressing in the cities, has been the building of *legal aid* organizations. The first of these goes back in New York to 1876; it was founded to help bewildered, often cheated immigrants. Since then legal aid organizations have taken many forms. They have been supported in some cases by private philanthropy, by social welfare organizations, often, recently, from Community Chest funds. In some cases they are municipal, provided by the city government for the benefit of the needy. In many cases they have been organized and supported by a local or state *Bar Association*, which, being composed of lawyers, recognizes its responsibility for the administration of justice for all.

We cannot describe legal aid organizations in detail; they differ from place to place anyway. But they are all alike in providing a place where a man who cannot afford to hire an attorney can get an attorney's services free (or perhaps at fees ranging from fifty cents to a couple of dollars). In most cases many attorneys donate certain hours to legal aid work. When an applicant comes in he is referred to an attorney who fits his needs; thereafter he works with that attorney on a private basis.

The rules as to what kinds of applicants will be accepted and what sorts of cases will be handled vary

from place to place. Generally, even if the organization cannot handle one's case, it will help put him in touch with someone who will do so competently and at a reasonable cost.

People who genuinely need such service should not hesitate to use it. The administration of justice is too important to be left to the chance of financial ability, and too fundamental a right to be considered charity. Persons who want to use legal aid organizations and do not know where they are should inquire of the local bar association, of a welfare organization, or of some law-enforcement agency.

Small Claims Courts. Many just claims are never secured through the courts because people fear—often with good reason—that their prosecution will be long and costly. In traditional court procedure, the person initiating a civil action must pay certain fees before the case ever starts and he may have to pay larger court costs later. Besides, it is generally necessary to be represented by an attorney, which adds to the expense. And since the courts, especially in large cities, are often from one to three years behind in their work, it will be a long while before any benefits are secured.

To solve such problems with reference to small matters, since 1913, a fairly large number of states and cities have set up small claims courts, such as mentioned in Chapter 18. These courts are generally limited to cases involving \$50 or less. They do not employ a jury. Attorneys, while not barred, are usually unnecessary. Plaintiff and defendant state their

cases in their own language. The judge brings out the facts by questioning, and decides upon the law in the matter. The whole procedure is simple and direct. There is very little cost, often about a dollar to the person initiating the action. Judgment is entered promptly, and the case is generally settled within a week or ten days after action is initiated. If a judgment is entered against the defendant, and he is unable to pay promptly, provisions are made to give him time and even to pay in instalments. The judgments of such courts are legally just as valid as those of other courts.

You may or may not have such courts in your community. (How could you find out?) If you do have, they are obviously of value in some cases.

IN SUMMARY

In this chapter we have not sought to encourage using the courts for every dispute, as a few persons do. But we have said that if your just interests are endangered or your just



rights are being invaded, then it is time to take action.

A matter of the first importance is to break the case out into the open. For secrecy is generally on the side of the wrong-doer. And the open sunlight of public action dries up more slimy dealings than most people can imagine.

The second thing is to get expert help: a powerful ally. Secure the services of a competent lawyer when you need him. Use the public servants whose duty it is to protect you. And if circumstances force you to utilize free legal service, do it without hesitation or shame because it is your right to do so.

THE COMMON SENSE OF IT

1. Do you know of a case in which consulting an attorney early in the affair would have been the stitch in time that saved nine?

2. Is a small claims court available in your community? Do you know of cases which such a court would have solved quickly and cheaply, but which the victims let slide because they feared high costs or a long, bothersome court process?

3. Do you have any direct evidence that failure to prosecute wrongdoings encourages further actions of the same sort?

4. How should you advise a person of limited means in your community to proceed if he needed expert legal service?

5. Now that you have completed this unit, what is your opinion of the relative importance of:

- a. Knowing some law and fashioning your business conduct so that you will at all times stay under the mantle of its protection?
- b. Knowing some law so that you can enforce your just rights, in court if necessary, after a difficulty has arisen?

6. Can you lay down a set of general rules of conduct in your consumer-business affairs that will secure for you the protection of the law at every step?

7. Do you agree by now that "business-like" procedure does not endanger but actually builds harmonious business relationships—that "good fences make good neighbors"?

APPENDIX

STATUTES OF LIMITATION IN THE
VARIOUS STATES

STATE	Open Accounts (Years)	Notes and Written Contracts (Years)	Judgments (Years)	STATE	Open Accounts (Years)	Notes and Written Contracts (Years)	Judgments (Years)
Alabama	3	6	20	Nebraska	4	5	15
Arizona	3	6	5	Nevada	4	6	6
Arkansas	3	5	10	New			
California	4	4	5	Hampshire	6	6	20
Colorado	6	6	20	New Jersey	6	6	20
Connecticut	6	6	None	New Mexico	4	6	7
Delaware	3	6	10	New York	6	6	20
District of Col.	3	3	12	North Carolina	3	3	10
Florida	3	5	20	North Dakota	6	6	10
Georgia	4	6	10	Ohio	6	15	26
Idaho	4	5	6	Oklahoma	3	5	5
Illinois	5	10	20	Oregon	6	6	10
Indiana	6	10	20	Pennsylvania	6	6	20
Iowa	5	10	20	Rhode Island	6	6	20
Kansas	3	5	5	South Carolina	6	6	20
Kentucky	5	5	15	South Dakota	6	6	20
Louisiana	3	5	10	Tennessee	6	6	10
Maine	6	6	20	Texas	2	4	10
Maryland	3	3	12	Utah	4	6	8
Massachusetts	6	6	20	Vermont	6	6	8
Michigan	6	6	10	Virginia	3	5	10
Minnesota	6	6	10	Washington	3	6	6
Mississippi	3	6	7	West Virginia	5	10	10
Missouri	5	10	10	Wisconsin	6	6	20
Montana	5	8	10	Wyoming	8	10	26

MINIMUM AMOUNTS FOR WHICH SALES MUST BE MADE IN WRITING UNDER
THE STATUTE OF FRAUDS

Alabama	\$500	Missouri	30
Alaska	50	Montana	200
Arizona	500	Nebraska	500
Arkansas	30	Nevada	50
California	500	New Hampshire	500
Colorado	50	New Jersey	500
Connecticut	100	New Mexico	50
Delaware	None	New York	50
District of Columbia	50	North Carolina	None
Florida	Any amount	North Dakota	500
Georgia	50	Ohio	2500
Hawaii	100	Oklahoma	50
Idaho	500	Oregon	50
Illinois	500	Pennsylvania	500
Indiana	500	Rhode Island	500
Iowa	Any amount	South Carolina	50
Kansas	None	South Dakota	500
Kentucky	500	Tennessee	500
Louisiana	None	Texas	None
Maine	500	Utah	500
Maryland	50	Vermont	40
Massachusetts	500	Virginia	None
Michigan	100	Washington	50
Minnesota	50	West Virginia	None
Mississippi	50	Wisconsin	50
		Wyoming	50

In the states of Florida and Iowa all sales regardless of amount must be in writing. States with designation "None" have no requirement and all sales of personal property in these states may be made orally.

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